

1 JEFFREY C. KRAUSE, (State Bar No. 94053)
jkrause@stutman.com
2 H. ALEXANDER FISCH, (State Bar No. 223211)
afisch@stutman.com
3 GABRIEL I. GLAZER, (State Bar No. 246384)
gglazer@stutman.com
4 STUTMAN, TREISTER & GLATT, P.C.
1901 Avenue of the Stars, 12th Floor
5 Los Angeles, CA 90067
Telephone: (310) 228-5600
6 Telecopy: (310) 228-5788

7 PAUL K. CAMPSER, (VSB No. 18133)
pkcampsen@kaufcan.com
8 DENNIS T. LEWANDOWSKI, (VSB No. 22232)
dtlewand@kaufcan.com
9 KAUFMAN & CANOLES, P.C.
150 West Main Street, Suite 2100
10 Norfolk, VA 23510
Telephone: (757) 624-3000
11 Telecopy: (757) 624-3169

12 Counsel for The Colonial Williamsburg Foundation

13 **UNITED STATES BANKRUPTCY COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**
15 **SAN FRANCISCO DIVISION**

16 In re:
17 CARTER'S GROVE, LLC,
18 Debtor.

Bankruptcy Case No: 11-30554

Chapter 11

**SUPPLEMENTAL MEMORANDUM IN
SUPPORT OF MOTION TO TRANSFER
VENUE CONSISTENT WITH THE
COURT'S TENTATIVE RULING**

Hearing

22 Date: July 7, 2011
23 Time: 11:00 A.M.
24 Place: Courtroom 23
235 Pine Street
San Francisco, CA 94104

1 Introduction

2 The Colonial Williamsburg Foundation ("CWF") submits this supplemental
3 memorandum in support of CWF's motion to transfer venue of this case from this Court to the
4 United States Bankruptcy Court for the Eastern District of Virginia, Newport News Division
5 ("VA Bankruptcy Court"), which CWF filed on March 3, 2011 [Doc. No. 22] ("Transfer Motion").¹
6 CWF will not repeat herein the facts or legal arguments set forth in the Transfer Motion. This
7 memorandum addresses only the following matters, each of which occurred after the original hearing
8 on the Transfer Motion: (1) the discovery taken by Carter's Grove, LLC (the "Debtor"), which
9 further demonstrates that virtually all witnesses are located in Virginia, (2) the filing of the Debtor's
10 *Complaint Regarding: (A) Objection to Claim Filed By The Colonial Williamsburg Foundation, (B)*
11 *Counterclaims For (I) Fraudulent Concealment, (II) Cost Recovery Under CERCLA, And (III)*
12 *Declaratory Judgment* [Doc. No. 64] ("Complaint"), and (3) the fundamental mischaracterizations of
13 the deposition testimony contained therein.

14 After briefing on the Transfer Motion was completed this Court issued its tentative
15 ruling ("Tentative Ruling"), which provided in relevant part as follows:

16 Whether venue should be transferred depends upon what activities will be
17 important to the administration of the case. **If Debtor objects to [CWF's]**
18 **claim on the basis of alleged misrepresentation re the Virginia**
19 **Property, or if Debtor seeks to challenge conservation easements against**
20 **the Virginia Property, those matters should be heard in Virginia and**
21 **venue should be transferred.** If Debtor's principal merely seeks time to
22 pay Debtor's obligations in full, administration can be handled effectively
23 in the present venue court is inclined to set a prompt deadline for filing
24 objections to claims, and to continue the matter to see what claim
25 objections are filed.

26 [Doc. No. 42] (emphasis added).

27 Based on the Court's Tentative Ruling the parties entered into a series of stipulations
28 providing for limited pre-litigation discovery by the Debtor, because the Debtor contended it needed

27 ¹ Capitalized terms not defined herein shall have the meaning set forth in the Transfer Motion.
28 This Supplemental Motion fully incorporates and relies upon all of the facts and legal arguments
set forth in the Motion that are not repeated here.

additional information to decide whether to sue CWF. The parties also agreed to set a deadline for the Debtor to file an objection to CWF's secured claim and any claims against CWF. The parties agreed to continue the hearing on the Transfer Motion, which is now scheduled for July 7, 2011. The Debtor demanded the production of documents by CWF, which CWF produced from the records it maintains in Virginia. The Debtor also deposed four witnesses, each of whom resides in Virginia.

On June 24, 2011, the Debtor filed the Complaint against CWF in which the Debtor alleges that CWF fraudulently concealed the condition of the Virginia Property when the Debtor bought it. The Debtor alleges that CWF purportedly concealed: (1) water damage, moisture and mold in the Mansion, and (2) refuse and alleged hazardous substances purportedly dumped by CWF at the Virginia Property, including claims under CERCLA for past and future response costs. The Debtor seeks the disallowance of CWF's entire claim, declaratory relief, and compensatory damages or, in the alternative, rescission of the sale of the Virginia Property and restitution of the amounts paid to CWF, as well as reimbursement for past response costs, punitive damages and attorneys' fees. Complaint at pp. 13-14.

As CWF anticipated in the original Transfer Motion, the Complaint is premised on allegations regarding the condition of the Virginia Property when the Debtor acquired it, and CWF's alleged failure to disclose the conditions to the Debtor. All fact witnesses who are likely to testify in the adversary proceeding, other than Halsey Minor, are located in Virginia. Not surprisingly, every witness examined by the Debtor prior to filing the Complaint is based in Virginia. Most or all expert witnesses are likely to be located in Virginia and will certainly have to travel to Virginia to inspect the Virginia Property. For the reasons articulated by CWF in the papers supporting the Transfer Motion and by the Court in the Tentative Ruling, this chapter 11 case should be transferred to Virginia.

Argument

In deciding venue motions, bankruptcy courts consider the totality of the circumstances, including the following non-exclusive factors: (a) proximity of creditors to the Court; (b) proximity of debtor to the VA Bankruptcy Court; (c) proximity of witnesses necessary to

1 administration of estate; (d) location of assets; (e) economic and efficient administration of case; and
2 (f) need for further administration if liquidation ensues. *Donald v. Curry (In re Donald)*, 328 B.R.
3 192, 204 (B.A.P. 9th Cir. 2005). As CWF previously explained in the Transfer Motion, an analysis
4 of these factors overwhelmingly supports the transfer of the venue of this case from this Court to the
5 VA Bankruptcy Court.

6 After careful consideration of the facts and applicable case law, the Court agreed that
7 Virginia would be the most appropriate venue to adjudicate this case if the Debtor elected to file a
8 lawsuit against CWF based on alleged misrepresentations by CWF regarding the Virginia Property.
9 The Debtor has filed the Complaint on these very grounds, raising several claims, each of which
10 arises directly out of the alleged conditions of the Virginia Property. This Court recognized when it
11 issued its Tentative Ruling that if the Debtor chose to launch litigation against CWF (the senior
12 secured creditor with a lien on the Debtor's only material asset) that litigation would be central to the
13 resolution of the chapter 11 case and should proceed in Virginia where the Virginia Property and
14 virtually all witnesses are located. The Tentative Ruling was appropriate when this Court issued it
15 and nothing has changed. The Transfer Motion should be granted.

16 The Debtor has objected to CWF's claim, and has asserted offsets and counterclaims.
17 Given the amount of CWF's claim, the historical importance of the Virginia Property, and the fact
18 that these issues (most of which are controlled by Virginia law) will be the most significant
19 determinations in this chapter 11 case, the proximity of CWF and the witnesses likely to testify to
20 the forum should be given substantial weight. *In re West Coast Interventional Pain Med., Inc.*,
21 435 B.R. 569, 580 Bankr. (N.D. Ind. 2010).

22 The Complaint alleges that CWF's claim for the balance remaining on the Note
23 should be disallowed in its entirety because, among other things, the Virginia Property purportedly
24 had a leak known only to CWF, which CWF fraudulently concealed at the time of the sale. In light
25 of the alleged concealed water damage, moisture and mold, the Debtor also seeks damages based on
26 (i) amounts actually paid for the purchase of the Virginia Property in excess of the value of the
27 Virginia Property at the time of sale, (ii) the costs to "identify and remediate the cause of the water
28 intrusion and persistent mold" that were allegedly concealed, and (iii) the "persistent mold that is an

1 unacceptable health hazard to Mr. Minor's family, which must be fully corrected." Complaint at
2 ¶ 60. In addition, the Debtor asserts that CWF improperly buried, and thereby concealed, asphalt,
3 debris and hazardous substances on the Virginia Property, and that CWF is liable for the removal of
4 such items and remediation of the Virginia Property. The Debtor further asserts that CWF is liable
5 to the Debtor for past and future "response" costs under CERCLA.

6 CWF denies the allegations of fraud and concealment set forth in the Complaint.²
7 CWF is particularly disturbed by the mischaracterization of the deposition testimony given by
8 Thomas Peck, Director of Planning for CWF, based on incomplete excerpts which are cited in
9 paragraph 33 of the Complaint. CWF recognizes that now is not the time to address the merits of the
10 Complaint and the basis of the Transfer Motion is that litigation of such merits will require the
11 testimony of many witnesses based in Virginia. The location of the witnesses is the relevant factor
12 in connection with the Transfer Motion, not their actual substantive testimony.

13 That said, the Debtor has taken portions of Mr. Peck's testimony out of context in an
14 effort to paint a misleading picture. The Complaint alleges that Mr. Peck "unambiguously admitted
15 that CWF's remedial work with respect to water damage was undertaken for the express purpose of
16 shielding the adverse conditions from prospective purchasers." Complaint at ¶ 33. This is simply
17 untrue. The Debtor has cobbled together Mr. Peck's answers, out of context and out of order, in an
18 effort to mislead the Court into believing that Mr. Peck testified that CWF sought to deceive the
19 Debtor and cover up certain defects. During Mr. Peck's deposition,³ counsel for the Debtor
20 expressly stated that when he used the term "cover-up," he did not mean "it like in Watergate:"

21 Q. You'll see again on page 1598 that there are references to repairing
22 plaster, and on page 1599 there is observation of mold that should be
23 washed. Is it fair to say that all of the re-plastering and washing of the
24 mold was being done to cover up the condition that you observed for
25 purposes of sale?

26 ² Prior to CWF noticing the foreclosure sale of the Virginia Property and during the three year
27 period that the Debtor owned and was in possession of the Virginia Property, neither the Debtor
28 nor Minor advised CWF of the "leak" issue. It was only after the Debtor was given notice of the
impending foreclosure sale that the Debtor decided that the monetary defaults under the Note
were justified by the "leak" issue. Taylor Declaration ¶ 14.

³ A copy of the complete transcript of Mr. Peck's May 24, 2011 deposition ("Peck Deposition
Transcript"), is attached hereto as **Exhibit A**.

1 Mr. Campsen: I'm going to object to the term cover-up to the extent that it –

2 Mr. Morris: **I mean physically cover up. I'm not using it like in**
3 **Watergate.**

4 Peck Deposition Transcript at 50, line 16 to 25 (emphasis added). Despite this explanation, the
5 Debtor now contends that when Mr. Morris asked questions and Mr. Peck answered them regarding
6 an effort to clean up the Virginia Property, the testimony purportedly demonstrates an intent to
7 "cover-up" and conceal the alleged defects.

8 Mr. Peck actually testified that he believed any damage at the Mansion had been
9 completely repaired, so that there was no defect or damage to be concealed. Mr. Peck testified that
10 CWF's repair efforts were completed in the ordinary course and in preparation for the sale, and that
11 the water damage had been completely repaired before the sale:

12 Q: Did you have an understanding that the water damage that you observed at
13 that time was going to be patched and painted over?

14 A: It was going to be repaired. I wouldn't use the word patched. I would use the
15 word repair.

16 Peck Deposition Transcript at 40, line 24 to 41, line 24.

17 Q: Was the point of the exercise to make it so that the water damage was no
18 longer visible?

19 A: It was to repair the broken plaster. Again, it was not an active leak. If it
20 would have been an active leak, we would have repaired it.

21 Peck Deposition Transcript at 42, line 10-14.

22 Q: On the process of doing your walkthrough, if there was a serious issue in the
23 building, would you have had an investigation?

24 [Objection]

25 A: Absolutely. If there was a problem, we would have fixed it.

26 Q: Were there any other things you observed and written down in Exhibit No. 3
27 of the nature that required further inspection?

28 A: No.

Peck Deposition Transcript at 42, line 13-25.

1 Q: What was the general condition of the building in 2007?

2 A: I think the general condition of the building was in good condition.

3 Peck Deposition Transcript at 92, line 8 to line 11.

4 Q: Let's take the repairs that are shown on Exhibit No. 3 What was the purpose of
5 doing all of these repairs shown on Exhibit No. 3?

6 A: The purpose was to make sure that the house was in better condition, and we
7 wanted to make the house look as good as it could for the sale.

8 Q: Did the Foundation attempt to cover up any of the issues and repairs that were
9 necessary to the property?

10 [objection]

11 A: Absolutely not.

12 Peck Deposition Transcript at 93, line 11 to line 25.

13 Mr. Peck did not testify that he believed that there existed problems that CWF was
14 concealing; he testified he believed the problems had been completely repaired. Relevant portions
15 of the Peck Deposition Transcript appear at pages 39-44, 46-47, 50-51, and 90-93. CWF does not
16 ask this Court to address the merits of the allegations set forth in the Complaint based on the
17 Complaint and the entire Peck Deposition Transcript. CWF could not, however, allow the
18 mischaracterization of Mr. Peck's testimony based on limited sound-bites in the Complaint to create
19 the misimpression that CWF's employee somehow admitted CWF had sought to conceal defects.

20 CWF intends to vigorously defend the Complaint and in doing so will rely on the
21 testimony of many witnesses, all of whom are located in Virginia. Virginia lawyers conducted the
22 sale of the Virginia Property. Virginia residents maintained the Virginia Property prior to the sale
23 and Virginia caretakers have maintained the Virginia Property since the sale closed. Virginia
24 experts will be in the best position to testify about the condition of the Virginia Property, the historic
25 significance of the Virginia Property, and the steps needed to properly maintain the Virginia
26 Property going forward. Virginia appraisers will testify about the value of the Virginia Property.
27 CWF has identified approximately 20 fact witnesses who CWF anticipates may be required to testify
28 based on the allegations in the Complaint. Other than Mr. Minor, all of these potential fact witnesses

1 reside in Virginia. It would be patently unfair and inconvenient and would generate a great expense
2 to require CWF and all these witnesses to travel across the country to litigate these matters.

3 **Conclusion**

4 CWF respectfully submits that the Court's Tentative Ruling was well-founded and
5 that the Court should grant the Transfer Motion.

6 Respectfully submitted,

7 Dated: July 1, 2011

8 STUTMAN, TREISTER & GLATT
9 JEFFREY C. KRAUSE
H. ALEXANDER FISCH
GABRIEL I. GLAZER

10 By: /s/ H. Alexander Fisch
11 Counsel for THE COLONIAL
12 WILLIAMSBURG FOUNDATION
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EXHIBIT "A"

1 IN THE UNITED STATES BANKRUPTCY COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
3 San Francisco Division
4
5

6 IN RE:)
7)
8 CARTER'S GROVE, LLC,) Case No. 11-30554 (TC)
9) Chapter 11
Debtor.)

10
11
12
13
14 DEPOSITION OF
15 COLONIAL WILLIAMSBURG FOUNDATIONS, BY AND THROUGH
16 THOMAS PECK
17 WILLIAMSBURG, VIRGINIA
18 MAY 24, 2011
19
20

21 ATKINSON-BAKER, INC.
22 COURT REPORTERS
23 500 North Brand Boulevard, Third Floor
Glendale, California 91203
(818) 551-7300

24 REPORTED BY: NANCY C. MANN

25 File No.: A50486A

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THOMAS PECK MAY 24, 2011

<p>1 THOMAS PECK, 2 having first been duly sworn, was 3 examined and testified as follows: 4 5 EXAMINATION 6 7 BY MR. MORRIS: 8 Q. Good morning, Mr. Peck. 9 A. Good morning. 10 Q. Would you please state your name for the 11 record. 12 A. Tom Peck. 13 Q. Where do you live, Mr. Peck? 14 A. I live in Toano, Virginia. 15 Q. Mr. Peck, my name is John Morris. I'm an 16 attorney here for the current owner of the Carter's Grove 17 property. I'm going to ask you a series of questions to 18 which you are required to give complete answers to the best 19 of your knowledge. Do you understand that? 20 A. Yes, sir. 21 Q. If you don't understand any question that I 22 ask, please let me know and I'll try to rephrase it so that 23 I can clarify or eliminate any confusion that you might 24 have. Do you understand that? 25 A. Yes, I do.</p> <p style="text-align: right;">Page 6</p>	<p>1 Q. If you would like to take a break at any time, 2 just let me know and I'll be happy to accommodate you as 3 long as a question is not pending. Is that okay? 4 A. That's fine. 5 Q. Are you currently employed? 6 A. Yes, I am. 7 Q. Who is your employer? 8 A. Colonial Williamsburg. 9 Q. Is that also known as the Colonial 10 Williamsburg Foundation? 11 A. Yes, it is. 12 Q. During the course of this deposition I'm going 13 to refer to the Foundation, and when I do will you 14 understand that I'm referring to your employer? 15 A. Yes, I will. 16 Q. What is your title today? 17 A. Director of planning. 18 Q. How long have you held that title? 19 A. Since 1995. 20 Q. What are your duties and responsibilities 21 today as the director of planning for the Foundation? 22 A. I'm in charge of project management, 23 construction management, capital planning. 24 Q. Have those three broad areas been within your 25 scope of duties and responsibilities since the time you</p> <p style="text-align: right;">Page 7</p>
<p>1 become the director of planning at the Foundation in 1995? 2 A. No. I took on the role of construction 3 management responsibility in roughly 2009. 4 Q. Prior to 2009 were the two broad areas of 5 responsibility for you project management and capital 6 planning? 7 A. Yes. 8 Q. Are you aware that the Foundation sold the 9 property known as Carter's Grove in or around December of 10 2007? 11 A. Yes, I am. 12 Q. Prior to the sale of Carter's Grove by the 13 Foundation, did you have any responsibilities with respect 14 to Carter's Grove? 15 MR. CAMPSER: I have to object. Can you kind 16 of limit the time frame? 17 MR. MORRIS: Sure. 18 19 BY MR. MORRIS: 20 Q. Between 1995 and the sale. 21 A. Responsibilities? 22 Q. Yes. 23 A. I was involved with the prior -- with the work 24 prior to the sale, and I have general knowledge of before 25 that.</p> <p style="text-align: right;">Page 8</p>	<p>1 Q. When did your work in connection with Carter's 2 Grove prior to the sale begin? 3 A. Roughly 2007. Specifically, I was involved in 4 some analysis and some discussion prior to that. 5 Q. When you say 2007, do you mean roughly January 6 of 2007? 7 A. Yes, I do. 8 Q. Prior to January of 2007, what analysis and 9 discussion were you involved in with respect to Carter's 10 Grove? 11 A. We were involved in making decisions on what 12 to do with the property from roughly 2003 through 2007. 13 Q. Other than the discussions and analyses 14 concerning what to do with the property during that period 15 of time, did you have any other responsibilities with 16 Carter's Grove prior to the sale? 17 A. You'll have to limit the time frame. 18 Q. Let's say 1995 to the sale. 19 A. I was involved in project work that went on at 20 Carter's Grove from '95 on. 21 Q. From 2002 until the sale, were you involved in 22 any project work at Carter's Grove? 23 A. No, not until 2007. 24 Q. Can you describe generally what project work 25 you were involved in at Carter's Grove between 1995 and</p> <p style="text-align: right;">Page 9</p>

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THOMAS PECK MAY 24, 2011

<p>1 2002?</p> <p>2 A. I can't specifically, but I know there was</p> <p>3 replacement work that was done out there. Heating systems</p> <p>4 were replaced. I think we did some air conditioning work</p> <p>5 from '95 on. So I know that there was some work that went</p> <p>6 on there, but not specifically.</p> <p>7 Q. Is it fair to say that from 2002 until the end</p> <p>8 of 2006 your only involvement with Carter's Grove was</p> <p>9 analysis and discussion concerning what to do with the</p> <p>10 property?</p> <p>11 A. That's true.</p> <p>12 Q. Do you recall whether, as part of the</p> <p>13 discussion about what to do with the property from 2002 to</p> <p>14 2006, the condition of the property was ever discussed?</p> <p>15 MR. CAMPSER: I think it was 2003 to 2006, not</p> <p>16 2002.</p> <p>17 THE WITNESS: That's true.</p> <p>18 MR. MORRIS: Let me rephrase it then.</p> <p>19</p> <p>20 BY MR. MORRIS:</p> <p>21 Q. During the period from 2003 to 2006, when you</p> <p>22 were involved in discussion about what to do with the</p> <p>23 property, was the condition of the property ever discussed?</p> <p>24 A. Yes, it was.</p> <p>25 Q. Do you recall any discussion about the</p> <p style="text-align: right;">Page 10</p>	<p>1 condition of the property during that period of time?</p> <p>2 A. In very general terms.</p> <p>3 Q. Can you describe for me in general terms what</p> <p>4 you remember?</p> <p>5 A. We were asked to give our opinion of the</p> <p>6 condition of the building from all kinds of physical assets</p> <p>7 of the building, from the roof to the boiler room, because</p> <p>8 those discussions engendered conversation about what to do</p> <p>9 with the property. And there was a group of us that have</p> <p>10 had enough corporate knowledge and have enough knowledge of</p> <p>11 the property to give opinions in those areas.</p> <p>12 Q. And did you give any opinions?</p> <p>13 A. Sure.</p> <p>14 Q. Do you recall any opinion you gave?</p> <p>15 A. No, I don't.</p> <p>16 Q. Do you recall whether any of your opinions are</p> <p>17 reflected in any documents, memos, emails, or any written</p> <p>18 communication?</p> <p>19 A. I don't recall that.</p> <p>20 Q. Can you tell me more specifically what assets</p> <p>21 you were asked to give opinions about?</p> <p>22 A. For instance, the condition of the air</p> <p>23 conditioning system, the interior condition, the condition</p> <p>24 of the grounds.</p> <p>25 Q. Did you say the boiler?</p> <p style="text-align: right;">Page 11</p>
<p>1 MR. CAMPSER. No.</p> <p>2 THE WITNESS: I said the systems, heating and</p> <p>3 air conditioning, electrical systems and such.</p> <p>4</p> <p>5 BY MR. MORRIS:</p> <p>6 Q. Let's start with the AC system. Do you have</p> <p>7 any recollection of any opinion you provided with respect to</p> <p>8 the air conditioning system during this period of 2003 to</p> <p>9 2006?</p> <p>10 A. Well, I know it's age, and I can hypothesize</p> <p>11 from its age its general condition.</p> <p>12 Q. I appreciate that, but I'm asking you if you</p> <p>13 have any particular recollection of any of the opinions that</p> <p>14 you expressed.</p> <p>15 A. Other than what I just said, I think that</p> <p>16 would have been my opinion.</p> <p>17 Q. Do you remember the condition of the air</p> <p>18 conditioning system during this period of time from 2003 to</p> <p>19 2006?</p> <p>20 A. Sure.</p> <p>21 Q. Can you describe for me what the condition of</p> <p>22 the air conditioning system was during that time?</p> <p>23 A. During the time period of 2002 to --</p> <p>24 Q. 2003 to 2006.</p> <p>25 A. I would say the condition was generally in</p> <p style="text-align: right;">Page 12</p>	<p>1 good condition given its age.</p> <p>2 Q. How old was it?</p> <p>3 A. It was installed in roughly 1974, so that's</p> <p>4 almost 30 years old.</p> <p>5 Q. Did you have any understanding at that time</p> <p>6 about what the normal expected life of an air conditioning</p> <p>7 unit, such as the one that was in Carter's Grove, would be</p> <p>8 expected to have?</p> <p>9 A. Usually that stuff lasts 30 to 40 years.</p> <p>10 Q. Were you of the opinion during that period of</p> <p>11 time, 2003 to 2006, that the air conditioning system at</p> <p>12 Carter's Grove was near the end of its expected useful life?</p> <p>13 A. Yes, I do.</p> <p>14 Q. Do you recall whether you expressed your</p> <p>15 opinion that the air conditioning system was near the end of</p> <p>16 its useful life to anybody at the Foundation during the</p> <p>17 period of 2003 to 2006?</p> <p>18 A. I'm sure I did, but I can't recall</p> <p>19 specifically.</p> <p>20 Q. Do you know whether there were any problems</p> <p>21 identified in the mansion that resulted from the air</p> <p>22 conditioning system?</p> <p>23 A. No.</p> <p>24 Q. Do you recall whether anybody else expressed</p> <p>25 an opinion about the state of the air conditioning system</p> <p style="text-align: right;">Page 13</p>

1 during the period 2003 to 2006?
2 A. Can you rephrase the question again?
3 Q. Do you recall whether anybody else expressed
4 an opinion about the air conditioning system during this
5 period of time?
6 A. I'm sure they did.
7 Q. Do you have any recollection of that?
8 A. No.
9 Q. Were you asked to provide your opinions on the
10 assets that you've described?
11 A. I'm sure I was. I'm sure in some of those
12 documents that you're going to find my opinions in there.
13 Q. Was there a working group or some committee or
14 something to whom you were expected or asked to give your
15 opinions?
16 MR. CAMPSER: What time frame? Still 2003
17 to --
18 MR. MORRIS: Yeah.
19
20 BY MR. MORRIS:
21 Q. Let's assume that every question now is just
22 from 2002 to 2006.
23 A. There was a working group, and I was not a
24 part of that working group.
25 Q. Do you have an understanding as to what the

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1 understood it, of the work that was necessary to be done?
2 A. Well, I think given its age, for instance, the
3 air conditioning system at some point would need to be
4 replaced.
5 Q. Did you have an understanding of the time
6 period in which that replacement would be expected to occur?
7 A. As I said before, generally those things last
8 30 to 40 years.
9 Q. Was there any other asset or system at
10 Carter's Grove that you felt was going to need to be
11 replaced within five years of your deliberations?
12 A. Within five years, no.
13 Q. How about within ten years?
14 A. No.
15 Q. Did you ever see a budget that was prepared
16 that described the projected costs that would be necessary
17 if the Foundation decided to retain Carter's Grove as
18 opposed to selling it?
19 A. Yes.
20 Q. Do you recall who was responsible for
21 preparing that budget?
22 A. I put a lot of that together.
23 Q. Do you recall approximately what the cost
24 would have been to complete the items on the budget if the
25 Foundation had decided to retain Carter's Grove?

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1 purpose of the working group was?
2 A. In my opinion the working group was put
3 together to develop options as to what the future use of the
4 property would be.
5 Q. And in considering those options, were you
6 expected to give your opinions as to assets so that the
7 working crew could decide what would be needed if they were
8 going to retain Carter's Grove?
9 A. I wasn't part of the working group, but I'm
10 sure my opinions got floated to that level.
11 Q. Do you recall whether you expressed the
12 opinion to anybody within the working group that retention
13 of Carter's Grove would require the replacement of the air
14 conditioning system in some short period of time?
15 A. Do I recollect if I made that recommendation?
16 Q. Yes.
17 A. No, I don't -- I don't think I made that
18 recommendation.
19 Q. Do you recall whether you expressed an opinion
20 to anybody in the working group that any of the assets or
21 systems that you described would need to be replaced in the
22 short term?
23 A. I think it was general knowledge that there
24 was work that was necessary to be done.
25 Q. What was the general knowledge, as you

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1 A. No, I don't.
2 Q. How did you go about putting that budget
3 together?
4 A. We broke the facility assets of the building
5 out in pieces, looked at its condition, and tried to
6 determine what it would cost to bring it back to a
7 serviceable level.
8 Q. Did you have assistance in the preparation of
9 that budget?
10 A. I don't recall at this time who worked with me
11 on that.
12 Q. Did you present that budget to any particular
13 person?
14 A. The budget eventually went to Bob Taylor.
15 Q. Did you personally present it to Mr. Taylor?
16 A. Yes. It came from that. We didn't sit down
17 face to face and do it, but yeah.
18 Q. Did there ever come a time when you sat down
19 face to face with anybody to discuss what you believed was
20 your final budget?
21 A. Yes.
22 Q. Do you recall with whom you had that face to
23 face conversation?
24 A. Let me retract that. I don't think I ever did
25 a face to face. I think I sent him a spreadsheet or a

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1 letter and said these are the costs and so on and so forth.
2 I don't think that we ever had a face to face conversation.
3 **Q. Did anybody ever ask you any questions about**
4 **what you perceive to be your final budget?**
5 A. I'm sure there was discussion about it, but I
6 don't remember specifically.
7 **Q. Did the budget that you prepared contemplate**
8 **the replacement cost of the air conditioning system?**
9 A. I'm sure it did.
10 **Q. Do you recall whether the overall size of the**
11 **budget was more than \$1,000,000.00?**
12 A. No, I don't recall that.
13 **Q. Do you recall if it was more than \$500,000.00?**
14 A. It must have been more than \$500,000.00, sure,
15 certainly.
16 **Q. Are you at all familiar with the maintenance**
17 **budget for Carter's Grove during this period from 2003 to**
18 **2006?**
19 A. I know what the budget was before we closed
20 the building in rough numbers, but I'm not familiar with the
21 period between 2003 and 2006.
22 **Q. What was it before you closed the building,**
23 **roughly?**
24 A. Roughly a quarter million dollars.
25 **Q. And you have no sense as to the magnitude of**

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1 A. Anybody at the Colonial Williamsburg?
2 **Q. Yes.**
3 MR. CAMPSER: Are we talking about the same
4 time frame?
5 MR. MORRIS: Yes, any time after the decision
6 was made.
7 THE WITNESS: Yes, there was casual
8 conversation about why we're selling Carter's
9 Grove.
10
11 BY MR. MORRIS:
12 **Q. Do you recall any of those casual**
13 **conversations?**
14 A. Not specifically.
15 **Q. Do you recall generally?**
16 A. Well, there was obviously much discussion
17 internally about the selling of Carter's Grove. It's a big
18 asset. It's been with us a long time. So, yes, there was
19 lots of conversation in the hallway at the water fountain
20 about the selling of Carter's Grove.
21 **Q. Did you have any opinion about what the**
22 **Foundation should do with that property?**
23 A. My opinion?
24 **Q. Yes.**
25 A. I think they made the right decision.

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1 **the maintenance budget post closing?**
2 A. It must have been less.
3 **Q. Why do you say that?**
4 A. Because the building wasn't open to the
5 public.
6 **Q. I know there are less or fewer maintenance**
7 **costs as a result of that?**
8 A. Yes.
9 **Q. Do you have any understanding of what**
10 **maintenance costs would be reduced or eliminated as a result**
11 **of the closing of the building?**
12 A. No, I don't.
13 **Q. Do you recall when the decision was made to**
14 **sell the property?**
15 A. Well, I know when that decision was made, but
16 I don't recall it at this time. But I think it was late
17 2006.
18 **Q. Are you at all familiar with the reasons which**
19 **caused the Foundation to decide to sell rather than retain**
20 **Carter's Grove?**
21 A. No, I'm not.
22 **Q. Did you ever discuss with anybody the reasons**
23 **why the Foundation decided to sell Carter's Grove?**
24 A. With anybody?
25 **Q. Yes.**

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1 **Q. To sell it?**
2 A. Yes.
3 **Q. Why do you think that?**
4 A. Because I don't think it fits into the message
5 of Colonial Williamsburg.
6 **Q. In what sense doesn't it fit in?**
7 A. Well, it doesn't interpret -- it's not part of
8 the town of Williamsburg, and I think that we ought to focus
9 our efforts on the core of the -- in the historic area as
10 opposed to sort of outlying properties.
11 **Q. Do you have an understanding as to when the**
12 **Foundation acquired Carter's Grove?**
13 A. Roughly '69.
14 **Q. At any point from 1969 until the sale in 2007**
15 **was Carter's Grove part of the town?**
16 A. No.
17 **Q. So that wasn't a new fact that developed in**
18 **2003, 4, 5, or 6, is it?**
19 A. No.
20 **Q. Is there anything that occurred during that**
21 **period that led you to believe that a sale would be**
22 **appropriate other than the fact that it wasn't part of the**
23 **town?**
24 A. Say the question again.
25 **Q. Was there anything that led you to believe**

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<p>1 that the decision to sell was the right one other than the</p> <p>2 fact that Carter's Grove was not part of the town?</p> <p>3 A. Well, I didn't get involved in the decision to</p> <p>4 sell Carter's Grove, so I'll have to leave that to the</p> <p>5 people that made that decision.</p> <p>6 Q. But you did form an opinion that the decision</p> <p>7 to sell was the right one; is that correct?</p> <p>8 A. Yes, I did.</p> <p>9 Q. And did you base that opinion on anything</p> <p>10 other than the fact that Carter's Grove was not part of the</p> <p>11 town?</p> <p>12 A. No.</p> <p>13 Q. You were aware of the cost of your maintenance</p> <p>14 and repair budget; is that correct?</p> <p>15 A. Uh-huh.</p> <p>16 Q. Was the cost of the maintenance and repair</p> <p>17 budget a factor in your opinion that the decision to sell</p> <p>18 was the right one?</p> <p>19 A. Yes.</p> <p>20 Q. In what way?</p> <p>21 A. It's a very expensive property to own and</p> <p>22 operate. And I was not privy to the revenue, so I can't</p> <p>23 judge on that, but I do know that it was an expensive</p> <p>24 property to operate.</p> <p>25 Q. Do you know what the primary expenses of</p> <p style="text-align: right;">Page 22</p>	<p>1 operation were?</p> <p>2 A. No.</p> <p>3 MR. MORRIS: I would like to mark as Peck</p> <p>4 Exhibit No. 1 a document that's titled, "The</p> <p>5 Colonial Williamsburg Foundation's Designation of</p> <p>6 Deponents Pursuant to Rule 30(b)(6)."</p> <p>7</p> <p>8 (Colonial Williamsburg Foundation's</p> <p>9 Designation of Deponents was marked as</p> <p>10 Peck Exhibit No. 1 for identification.)</p> <p>11</p> <p>12 BY MR. MORRIS:</p> <p>13 Q. Mr. Peck, I'm going to direct your attention</p> <p>14 to Page 5. I just want to go through this document with you</p> <p>15 to see if you can confirm what's being presented. Have you</p> <p>16 seen this document before, sir?</p> <p>17 A. No, I have not.</p> <p>18 Q. Mr. Peck, the current owner of the property</p> <p>19 has asked the Foundation to provide a witness to answer</p> <p>20 questions with respect to certain topic areas. I'll</p> <p>21 represent to you that this document was prepared by the</p> <p>22 Foundation's lawyers in response to those requests. I just</p> <p>23 want to go through the document to make sure that you know</p> <p>24 why you're here and that you're prepared to answer the</p> <p>25 questions on the topics that the Foundation has offered</p> <p style="text-align: right;">Page 23</p>
<p>1 you for.</p> <p>2 In No. 1 under C, a request has been made for</p> <p>3 a witness who could describe maintenance and repair at</p> <p>4 Carter's Grove during the five years prior to the sale, and</p> <p>5 I have summarized that. Below you're referred to as someone</p> <p>6 having knowledge of the maintenance and repair but limited</p> <p>7 to work performed on the property in connection with the</p> <p>8 walkthrough and in preparation for the sale. Do you see</p> <p>9 that?</p> <p>10 A. Yes, I do.</p> <p>11 Q. Do you, in fact, have knowledge about the</p> <p>12 maintenance and repair with respect to work performed on the</p> <p>13 property in connection with the walkthrough and in</p> <p>14 preparation for the sale?</p> <p>15 A. Can you describe what the word walkthrough</p> <p>16 means?</p> <p>17 Q. That was really a word that was used by the</p> <p>18 Foundation and not by me or my colleagues.</p> <p>19 Mr. CAMPSER: If I might add, I think</p> <p>20 what they're referring to there is the 2007</p> <p>21 room by room inspection. I think it was about</p> <p>22 January or in early 2007, a room by room</p> <p>23 inspection.</p> <p>24 THE WITNESS: Okay.</p> <p>25</p> <p style="text-align: right;">Page 24</p>	<p>1 BY MR. MORRIS:</p> <p>2 Q. Can you describe for me the maintenance and</p> <p>3 repair work that was performed on the property in connection</p> <p>4 with the walkthrough?</p> <p>5 A. Yes, I can.</p> <p>6 Q. Can you do that for me, please?</p> <p>7 A. As part of the walkthrough?</p> <p>8 Q. Yes.</p> <p>9 A. Once we made the decision to sell the</p> <p>10 property, we formed a team of people. I was asked to be the</p> <p>11 designate to coordinate all of the work necessary to turn</p> <p>12 the house from -- sort of transfer the house from a museum</p> <p>13 setting, a public house, into a residence. There was a team</p> <p>14 of us that walked through the building, and we identified in</p> <p>15 not only that building but all the rest of the buildings the</p> <p>16 work necessary to take all of the museum items out and to</p> <p>17 prepare it for the sale.</p> <p>18 Q. Other than the moving of furniture, did you</p> <p>19 have any responsibility for any maintenance and repair with</p> <p>20 respect to the walkthrough?</p> <p>21 A. Those people did not report to me directly,</p> <p>22 but I was asked to be the coordinator of all the work.</p> <p>23 Q. Are you generally familiar with the</p> <p>24 maintenance and repair that was done in connection with the</p> <p>25 walkthrough?</p> <p style="text-align: right;">Page 25</p>

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<p>1 A. Generally.</p> <p>2 Q. What do you recall generally about the</p> <p>3 maintenance and repair that was done with respect to the</p> <p>4 walkthrough?</p> <p>5 A. We walked through the building and identified</p> <p>6 the work that we wanted to do, painting, plaster repair,</p> <p>7 moving of furniture, changing or taking down drapes, that</p> <p>8 sort of thing. We put it all on a list, and then over the</p> <p>9 course of the next two months, three months, the work got</p> <p>10 done. I was responsible to make sure that it did get done,</p> <p>11 and, you know, made decisions on who would do the work, how</p> <p>12 quickly it got done.</p> <p>13 Q. Was there a separate list that was created for</p> <p>14 maintenance and repair work that was done in preparation for</p> <p>15 the sale?</p> <p>16 A. A separate list? Yes, there was a list.</p> <p>17 Q. I'm just looking at this Item No. 1 on the</p> <p>18 document. Were there distinct periods of time that covered</p> <p>19 the maintenance and repair in connection with the</p> <p>20 walkthrough as opposed to maintenance and repair in</p> <p>21 preparation for the sale?</p> <p>22 A. No. There was generally one list of work that</p> <p>23 was done starting in roughly January of 2007. That was the</p> <p>24 list that we referred to as the walkthrough.</p> <p>25 Q. And is there anything --</p> <p style="text-align: right;">Page 26</p>	<p>1 A. Prior to that the building was closed to the</p> <p>2 public.</p> <p>3 Q. Was there anything done in preparation for the</p> <p>4 sale that wouldn't be included on the list that was</p> <p>5 initially created in January of 2007 in connection with the</p> <p>6 walkthrough?</p> <p>7 A. No.</p> <p>8 MR. MORRIS: Can we take a very short break?</p> <p>9 MR. CAMPSER: Sure.</p> <p>10</p> <p>11 (Whereupon, a brief recess was taken.)</p> <p>12</p> <p>13 BY MR. MORRIS:</p> <p>14 Q. Mr. Peck, did there come a time in late 2006</p> <p>15 that you were asked to oversee the maintenance and repair</p> <p>16 that was going to be conducted in connection with the sale?</p> <p>17 A. Yes.</p> <p>18 Q. Who asked you to do that?</p> <p>19 A. My boss, Tori Gussman.</p> <p>20 Q. Had you ever overseen the implementation of a</p> <p>21 maintenance and repair set of work in connection with the</p> <p>22 sale of a piece of property for the Foundation?</p> <p>23 A. No.</p> <p>24 Q. Do you know why you were asked to perform this</p> <p>25 role at this time?</p> <p style="text-align: right;">Page 27</p>
<p>1 A. I have a lot of project management experience.</p> <p>2 I'm good at taking a loosely defined project and making it</p> <p>3 happen.</p> <p>4 Q. As part of your project management experience,</p> <p>5 did you ever have occasion to oversee maintenance and repair</p> <p>6 budgets?</p> <p>7 A. Yes.</p> <p>8 Q. How about with respect to the implementation</p> <p>9 of maintenance and repair tasks?</p> <p>10 A. Yes.</p> <p>11 Q. Can you describe the circumstances where your</p> <p>12 duties and responsibilities called for you to implement</p> <p>13 maintenance and repair work?</p> <p>14 A. Prior to 1995 I was the director of mechanical</p> <p>15 operations in maintenance and had 45 people under my</p> <p>16 responsibility and had maintenance and repair budgets there.</p> <p>17 Q. From 1995 to 2006 had you had any</p> <p>18 responsibility for overseeing maintenance and repair work on</p> <p>19 behalf of the Foundation?</p> <p>20 A. I would say not specifically, but generally</p> <p>21 I was part of the maintenance operation. I was involved</p> <p>22 in estimates and project management and work that was going</p> <p>23 on. So I did have general knowledge of maintenance and</p> <p>24 repair.</p> <p>25 Q. But no supervisory role in executing</p> <p style="text-align: right;">Page 28</p>	<p>1 maintenance and repair action plans?</p> <p>2 A. That's true.</p> <p>3 Q. What specifically did Tori Gussman ask you to</p> <p>4 do with respect to maintenance and repair in preparation for</p> <p>5 sale?</p> <p>6 A. She asked me to coordinate the efforts to do</p> <p>7 the work necessary to prepare the property for sale.</p> <p>8 Q. Who determined what efforts were necessary to</p> <p>9 prepare the property for sale?</p> <p>10 A. That was part of the walkthrough that we did</p> <p>11 in early 2007.</p> <p>12 Q. Who was part of that walkthrough?</p> <p>13 A. Bob Taylor, Ron Hurst, Ernest Clements, and</p> <p>14 myself.</p> <p>15 Q. How long did the walkthrough last?</p> <p>16 A. Three hours.</p> <p>17 Q. Did you tour any building on the property</p> <p>18 other than the mansion? Withdrawn. Did you tour the</p> <p>19 mansion as part of the walkthrough?</p> <p>20 A. Yes, we did.</p> <p>21 Q. Did you tour any other building on the</p> <p>22 property other than the mansion?</p> <p>23 A. Not at that time. We came back later and did</p> <p>24 the other buildings.</p> <p>25 Q. Can you describe for me what other buildings</p> <p style="text-align: right;">Page 29</p>

<p>1 there are on the property?</p> <p>2 A. There is a caretaker's cottage. There is a</p> <p>3 museum building. There was a reception center building.</p> <p>4 There was a stable building. There were slave quarters</p> <p>5 buildings, and there was an operating stable building.</p> <p>6 Q. Now, just focussing on the mansion for the</p> <p>7 moment, was the maintenance and repair list, that was</p> <p>8 created with respect to the mansion, was that created as a</p> <p>9 result of the walkthrough that you described?</p> <p>10 A. Yes, it was.</p> <p>11 Q. Was the maintenance and repair list for the</p> <p>12 mansion ever amended or modified after the time it was</p> <p>13 created as a result of this walkthrough?</p> <p>14 A. I'm sure it was. It was added to, I'm sure.</p> <p>15 MR. MORRIS: I would like to mark as Peck</p> <p>16 Exhibit 2 some excerpts of the report that were</p> <p>17 previously delivered to us.</p> <p>18</p> <p>19 (Excerpts from Carter's Grove Methos</p> <p>20 Work Order History was marked as Peck</p> <p>21 Exhibit No. 2 for identification.)</p> <p>22</p> <p>23 BY MR. MORRIS:</p> <p>24 Q. Have you ever seen a document of this type,</p> <p>25 Mr. Peck?</p> <p style="text-align: right;">Page 30</p>	<p>1 A. Yes, I have.</p> <p>2 Q. Do you have an understanding of what this</p> <p>3 document is?</p> <p>4 A. Yes, I do.</p> <p>5 Q. What is your understanding of what this</p> <p>6 document is?</p> <p>7 A. This is a list of work orders that I assume</p> <p>8 but can't validate that -- it says, "Carter's Grove Methos</p> <p>9 Work History," so I assume that it's work that was done at</p> <p>10 Carter's Grove.</p> <p>11 Q. In the course of the work that you --</p> <p>12 A. Is that true?</p> <p>13 Q. I believe that's right, but I haven't seen</p> <p>14 these documents in the ordinary course of business. Have</p> <p>15 you ever seen a document in this format in the ordinary</p> <p>16 course of your business?</p> <p>17 A. Sure.</p> <p>18 Q. What is the Methos system?</p> <p>19 A. The Methos system is a maintenance management</p> <p>20 system that Colonial Williamsburg has, and it's used to</p> <p>21 record work that's done to all of our properties. It keeps</p> <p>22 track of cost, who works at a specific site, what gets done.</p> <p>23 It's sort of the brains that helps us do our work.</p> <p>24 Q. During 2007 when you were overseeing the</p> <p>25 maintenance and repair work that was being done in</p> <p style="text-align: right;">Page 31</p>
<p>1 preparation for the sale, was the work that was done</p> <p>2 reflected in any way in the Methos system?</p> <p>3 A. Yes, it was.</p> <p>4 Q. Can you describe for me the manner in which</p> <p>5 the work that was performed would be reflected in the Methos</p> <p>6 system?</p> <p>7 A. It would generally create a work order, and</p> <p>8 all of the efforts associated with the -- for instance, in</p> <p>9 this case, the work necessary at Carter's Grove to prepare</p> <p>10 it for sale would have gone into the work order system by</p> <p>11 step and by trade. All of the costs would have been</p> <p>12 accumulated. All the efforts would have been accumulated in</p> <p>13 that one work order. There may have been one work order for</p> <p>14 the interior, one work order for the exterior. We would</p> <p>15 have had different work orders for different buildings. It</p> <p>16 helped us categorize the work.</p> <p>17 Q. Do you know whether there was any work done in</p> <p>18 connection with the sale or in preparation for the sale that</p> <p>19 wasn't reflected in the work order?</p> <p>20 A. No. Now, you have to be careful with how specific</p> <p>21 the work is, but in general all the work was categorized in</p> <p>22 the work order.</p> <p>23 Q. Do you know whether there were any costs</p> <p>24 incurred by the Foundation in connection with the</p> <p>25 maintenance and repair that was done in preparation for sale</p> <p style="text-align: right;">Page 32</p>	<p>1 that would not be reflected in the Methos system?</p> <p>2 A. It would all be in the Methos system.</p> <p>3 Q. Do you know whether there was any work done by</p> <p>4 any third-party contractor that was done in preparation for</p> <p>5 the sale that's not reflected in the Methos system?</p> <p>6 A. That's not reflected in it, no. There</p> <p>7 wouldn't have been any work that was not reflected in the</p> <p>8 work order system.</p> <p>9 Q. Even if it was done by an outside party?</p> <p>10 A. Yes. For instance, we had a cleaning crew</p> <p>11 come in and help us with the preparation for the sale. That</p> <p>12 effort should be in the work order system.</p> <p>13 Q. Do you recall whether there was any</p> <p>14 expenditure by the Foundation that exceeded a thousand</p> <p>15 dollars for maintenance or repair work done in preparation</p> <p>16 for the sale?</p> <p>17 A. I'm sure there was.</p> <p>18 Q. Why are you sure there was?</p> <p>19 A. Because there was a lot of effort put into</p> <p>20 place. I'm sure the cleaning crew just by itself was more</p> <p>21 than a thousand dollars.</p> <p>22 MR. MORRIS: Since I have written on it, I'm</p> <p>23 not going to mark it as an exhibit, but I'm going</p> <p>24 to place before the witness documents with Bates</p> <p>25 Nos. CWF01741, 742, 743, and 744.</p> <p style="text-align: right;">Page 33</p>

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<p>1 BY MR. MORRIS:</p> <p>2 Q. I'm just going to show this to you, Mr. Peck.</p> <p>3 Looking at the document ending in Bates No. 741, is it fair</p> <p>4 to say that that is the beginning of the work orders that</p> <p>5 were entered in the Methos system for 2007?</p> <p>6 A. That date is either the date that the work</p> <p>7 order was written or the date that the work order was</p> <p>8 closed. And from that document I can't tell the difference.</p> <p>9 Q. If we continue down from the first entry of</p> <p>10 2007 and we turn the page, are all of the entries on the</p> <p>11 next page, which is Bates No. 742, entries for work orders</p> <p>12 that were either created or implemented in 2007?</p> <p>13 A. Created or implemented?</p> <p>14 Q. Yes.</p> <p>15 A. I can't tell that from that information.</p> <p>16 Q. Do you have any idea what the date in the</p> <p>17 right-hand column refers to?</p> <p>18 A. It's either the date that the work order was</p> <p>19 written or the date that it was closed, and I can't tell</p> <p>20 from this document what that is.</p> <p>21 Q. Is there any entry on pages ending in Bates</p> <p>22 No. 741, 742, 743, or 744 for a 2007 entry that exceeds a</p> <p>23 thousand dollars? If you'll just take a look.</p> <p>24 MR. CAMPSER: I'll just interject an</p> <p>25 objection that the document speaks for itself,</p> <p style="text-align: right;">Page 34</p>	<p>1 but you can go ahead and answer.</p> <p>2 THE WITNESS: So 741, 742?</p> <p>3</p> <p>4 BY MR. MORRIS:</p> <p>5 Q. All of the 2007 entries?</p> <p>6 A. No, I don't see any over a thousand dollars.</p> <p>7 Q. Do you recall whether there were any work</p> <p>8 orders that were prepared prior to 2007 in connection with</p> <p>9 the work that you were overseeing in preparation for the</p> <p>10 sale?</p> <p>11 A. Not in preparation for the sale.</p> <p>12 Q. Would a work order be closed at the time that</p> <p>13 the work was completed? Withdrawn. You mentioned that work</p> <p>14 orders are closed at some point in time; is that correct?</p> <p>15 A. That's correct.</p> <p>16 Q. At what point in time is a work order closed</p> <p>17 in the ordinary course of your business?</p> <p>18 A. When the work is complete.</p> <p>19 Q. And would the work done in preparation for the</p> <p>20 sale necessarily have to have been completed prior to the</p> <p>21 sale itself?</p> <p>22 A. Yes.</p> <p>23 Q. And the sale occurred in 2007; is that</p> <p>24 correct?</p> <p>25 A. That's true.</p> <p style="text-align: right;">Page 35</p>
<p>1 Q. So would all work orders done, with respect to</p> <p>2 the preparation for sale, necessarily have to have been</p> <p>3 closed in 2007?</p> <p>4 A. It could have been closed in 2008 after all</p> <p>5 the work was done. Usually we allow some time for all the</p> <p>6 invoices to arrive, and, actually, all the material to be</p> <p>7 acquired by the work order system, and then at that point</p> <p>8 it's closed. So it doesn't necessarily -- it could have</p> <p>9 happened in 2008.</p> <p>10 Q. Are you aware of any work order that was</p> <p>11 closed after the sale?</p> <p>12 A. I'm not aware of any, but I'm sure there was.</p> <p>13 Q. Looking at this document, does that refresh</p> <p>14 your recollection that services performed by contractors</p> <p>15 were not included in the Methos system?</p> <p>16 A. Say that again.</p> <p>17 Q. Looking at the document that I have placed</p> <p>18 before you, does that refresh your recollection that</p> <p>19 services rendered by contractors or other third parties were</p> <p>20 not recorded in the Methos system?</p> <p>21 A. I'm sorry. I'm trying to understand what</p> <p>22 you're asking me.</p> <p>23 Q. Earlier I believe you testified that your</p> <p>24 recollection was that all work done in preparation for the</p> <p>25 sale would be reflected in the Methos system, whether it was</p> <p style="text-align: right;">Page 36</p>	<p>1 done by the Foundation or whether it was done by third</p> <p>2 parties?</p> <p>3 A. That's true.</p> <p>4 Q. Then you testified that certain costs you</p> <p>5 recall being more than a thousand dollars; is that right?</p> <p>6 A. That's right.</p> <p>7 Q. Now looking at the document that I've placed</p> <p>8 before you, does that cause you to rethink your recollection</p> <p>9 that the Methos system reflects all expenses for maintenance</p> <p>10 and repair in preparation for the sale?</p> <p>11 A. It doesn't cause me to change my original</p> <p>12 answer. Is that the question?</p> <p>13 Q. It is the question. Do you see anywhere on</p> <p>14 the document that I've placed before you any entry for more</p> <p>15 than a thousand dollars?</p> <p>16 A. Sure.</p> <p>17 Q. Can you show me where that is?</p> <p>18 A. Right here.</p> <p>19 Q. Is that the work that you had in mind earlier</p> <p>20 when you were describing work done by a third party?</p> <p>21 A. I can't tell from that document what that is.</p> <p>22 Q. Can you tell from this document whether that</p> <p>23 entry refers to work done by a third party?</p> <p>24 A. Yes.</p> <p>25 Q. Just help me to understand that.</p> <p style="text-align: right;">Page 37</p>

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<p>1 A. Because this column reflects non-stock costs. 2 Generally we put contractor cost in the non-stock column. 3 So that would be material that we purchased off site, not 4 through our warehouse. And that's generally where we put 5 contractor costs. 6 Q. Now, the date of that is -- withdrawn. Is 7 the date of that October 23rd, 2006 for that particular 8 entry? 9 A. Yes, it is. 10 Q. Had you hired any third party for the purpose 11 of performing repair and maintenance in preparation for the 12 sale as early as October 23rd, 2006? 13 A. (The witness shakes head in the negative.) 14 Q. So is it fair to say that that particular 15 entry doesn't reflect maintenance and repair work that was 16 done in preparation for the sale? 17 A. In general that reflects that, yes. 18 Q. It does not reflect work that was done in 19 preparation for sale? 20 A. Right, generally it does not reflect, that's 21 right. 22 MR. MORRIS: I'm going to mark as Peck 23 Exhibit No. 3 a document with Bates Nos. CWF01589 24 through 599. 25</p> <p style="text-align: right;">Page 38</p>	<p>1 (Preparations Room by Room Listing, Bates 2 Nos. CWF01589 - CWF01599, was marked as 3 Peck Exhibit No. 3 for identification.) 4 5 BY MR. MORRIS: 6 Q. Mr. Peck, are you familiar at all with the 7 document that has been marked as Peck No. 3? 8 A. Yes, I am. 9 Q. Can you tell me what that document is? 10 A. This is a document that was prepared by myself 11 to assist the workers that were on the site making the 12 preparations for the sale. It was intended to identify room 13 by room what was necessary in each room to prepare it for 14 sale. 15 Q. Was this document prepared after the tour that 16 you described earlier? 17 A. Yes, it was. 18 Q. Turn to the second page. There is a reference 19 to water damage. Do you see that? 20 A. Yes, I do. 21 Q. Did you personally observe the water damage 22 that's referred to on this page? 23 A. Yes, I did. 24 Q. Do you recall what you saw? 25 A. No, I don't.</p> <p style="text-align: right;">Page 39</p>
<p>1 Q. Do you recall whether you had any conversation 2 with anybody on the tour about the water damage that's 3 referred to on this page? 4 A. No. 5 Q. Were you ever asked to identify the cause of 6 the water damage that you observed during this tour? 7 A. No. 8 Q. Did you ever make any effort to identify the 9 cause of the water damage in Grandma's Room that you 10 observed during this tour? 11 A. No, we did not. 12 Q. Did you ever ask anybody to identify the cause 13 of the water damage that you observed in Grandma's Room 14 during this tour? 15 A. No. 16 Q. To the best of your knowledge, prior to the 17 sale, did anybody identify the cause of the water damage 18 that you observed during this tour? 19 A. No, not to the best of my knowledge. 20 Q. Did you have an understanding of what work was 21 going to be done to remove the water damage, as you've used 22 that phrase, on this document? 23 A. Say the question again. 24 Q. What work was going to be done to remove the 25 water damage as you have used that term?</p> <p style="text-align: right;">Page 40</p>	<p>1 A. I'm sure the wall would have been patched 2 in some manner, whatever damage was there. It must not 3 have been an active leak. If it was an active leak, we 4 would have repaired it. It must have been from something 5 previous, or we would have investigated and repaired it. 6 Q. Did anybody tell you that there had been 7 water damage in that area prior to the time that you 8 observed it? 9 A. No. 10 Q. Did anybody ever tell you that that area had 11 previously been patched and repaired? 12 A. No. 13 Q. Did you ask anybody whether or not this 14 condition had been previously observed? 15 A. No, I didn't ask anybody. Again, if it had 16 been a bad problem, we would have fixed it. 17 Q. Do you have an understanding that that problem 18 was a persistent problem since at least 2003? 19 A. No. 20 Q. So is it your understanding that the water 21 damage that you observed at that time was going to be 22 patched and painted over? 23 A. It was going to be repaired. I wouldn't use 24 the word patched. I would use the word repair. 25 Q. What is your understanding of the steps that</p> <p style="text-align: right;">Page 41</p>

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<p>1 were required to repair?</p> <p>2 A. Whatever effervescence was visible would have</p> <p>3 been taken off. Some new plaster would have been put on,</p> <p>4 and it would have been painted.</p> <p>5 Q. Would it have been sanded?</p> <p>6 A. Possibly.</p> <p>7 Q. So new plaster, possible sanding and painting;</p> <p>8 is that right?</p> <p>9 A. That's right.</p> <p>10 Q. Was the point of the exercise to make it so</p> <p>11 that the water damage was no longer visible?</p> <p>12 A. It was to repair the broken plaster. Again,</p> <p>13 it was not an active leak. If it would have been an active</p> <p>14 leak, we would have repaired it.</p> <p>15 Q. I appreciate that, but you did observe water</p> <p>16 damage; is that correct?</p> <p>17 A. Uh-huh.</p> <p>18 Q. And you gave instructions to remove the water</p> <p>19 damage; is that correct?</p> <p>20 A. That's right.</p> <p>21 Q. And the goal of the removal of the water</p> <p>22 damage was to make it so that the water damage was no longer</p> <p>23 visible; is that fair?</p> <p>24 A. That's true.</p> <p>25 Q. Can you turn, please, to Page 1593? There is</p> <p style="text-align: right;">Page 42</p>	<p>1 a reference there in No. 4 to, quote, "Selectively touch up</p> <p>2 walls." Do you see that?</p> <p>3 A. Uh-huh.</p> <p>4 Q. Do you have any recollection at all as to why</p> <p>5 you wrote that?</p> <p>6 A. I think we went in there and looked at the</p> <p>7 condition of the paint on the walls and felt that it was</p> <p>8 best suited -- instead of painting out the entire room, was</p> <p>9 to selectively touch up the walls in lieu of painting out</p> <p>10 the entire room.</p> <p>11 Q. Do you have any recollection as to where in</p> <p>12 the second floor southeast bedroom the touch was needed?</p> <p>13 A. No, I don't.</p> <p>14 Q. Do you have any recollection as to the</p> <p>15 condition of the paint that required the touch up? Was it</p> <p>16 peeling? Was it chipping? Was it bubbling? Do you have</p> <p>17 any recollection as to what was happening?</p> <p>18 A. I don't have any recollection of that.</p> <p>19 Q. Can you turn to Page 1594? In Item 2 there is</p> <p>20 a reference to repair and replastering of the sides of the</p> <p>21 south dormers. Do you see that?</p> <p>22 A. Yes, I do.</p> <p>23 Q. Do you recall what caused you to write</p> <p>24 that?</p> <p>25 A. There must have been some plaster damage</p> <p style="text-align: right;">Page 43</p>
<p>1 on the sides of those dormer walls, which is typical in</p> <p>2 older houses.</p> <p>3 Q. Do you know what repair work would have been</p> <p>4 done to the condition that you just described?</p> <p>5 A. We would have scraped off the bad plaster, put</p> <p>6 some new plaster on and repainted.</p> <p>7 Q. Did you make any effort to determine the cause</p> <p>8 of the condition that you observed in this particular area</p> <p>9 of the mansion?</p> <p>10 A. No. Again, it wasn't an active leak. Even if</p> <p>11 it was a leak, it could have been from condensation of the</p> <p>12 inside of the building. It could have been from mold from</p> <p>13 the inside of the building. It could have been from</p> <p>14 anything. So, again, if it had been a bad problem, we would</p> <p>15 have fixed it.</p> <p>16 MR. MORRIS: Could I have my question read</p> <p>17 back? I move to strike the answer, and I would ask</p> <p>18 you to just listen to my question and answer my</p> <p>19 question.</p> <p>20 (Whereupon, the court reporter read</p> <p>21 back the previous question.)</p> <p>22</p> <p>23</p> <p>24 THE WITNESS: No.</p> <p>25</p> <p style="text-align: right;">Page 44</p>	<p>1 BY MR. MORRIS:</p> <p>2 Q. Did anybody ask you to attempt to identify the</p> <p>3 cause of the condition that you observed on the second floor</p> <p>4 west bathroom?</p> <p>5 A. No.</p> <p>6 Q. Did you ask anybody to make any effort to</p> <p>7 identify the cause of the condition that you observed in</p> <p>8 this room?</p> <p>9 A. No.</p> <p>10 Q. Once the bad plaster was scraped off, the new</p> <p>11 plaster replaced and the area repainted, nobody would be</p> <p>12 able to observe that there was a problem with the plaster in</p> <p>13 that particular spot in the mansion; is that correct?</p> <p>14 MR. CAMPSEN: I object, speculation.</p> <p>15</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. That was the goal, wasn't it, sir?</p> <p>18 A. Say the question again.</p> <p>19 Q. The goal of scraping off the bad plaster,</p> <p>20 putting on new plaster and repainting was so that the</p> <p>21 condition that you observed would no longer be visible; is</p> <p>22 that fair?</p> <p>23 A. That's true.</p> <p>24 Q. There is a reference there in No. 4 to washing</p> <p>25 mildew. Do you see that?</p> <p style="text-align: right;">Page 45</p>

<p>1 A. Yes, I do.</p> <p>2 Q. Do you recall seeing mildew in this particular</p> <p>3 area of the mansion?</p> <p>4 A. I don't recall at this point, but there must</p> <p>5 have been something there.</p> <p>6 Q. Do you recall seeing mildew in any other parts</p> <p>7 of the mansion other than this spot here?</p> <p>8 A. I don't recall that unless it's listed in this</p> <p>9 document.</p> <p>10 Q. Do you recall having any discussion with</p> <p>11 anybody in 2007 about mildew in the mansion?</p> <p>12 A. No.</p> <p>13 Q. Did anybody tell you that problems with mildew</p> <p>14 were a recurring problem in the mansion?</p> <p>15 A. No.</p> <p>16 Q. Did you tell anybody that you found mildew in</p> <p>17 the mansion other than what's reflected in this document?</p> <p>18 A. No.</p> <p>19 Q. Do you remember what you did with this</p> <p>20 document?</p> <p>21 A. This document was printed out page by page and</p> <p>22 taped in each individual room so the painters and carpenters</p> <p>23 and the workers knew exactly what had to be done in every</p> <p>24 room.</p> <p>25 Q. Did you personally tape it up in each room?</p> <p style="text-align: right;">Page 46</p>	<p>1 A. Yes, I did.</p> <p>2 Q. Did you have any conversations with any of the</p> <p>3 workers about the content of the pages that you were putting</p> <p>4 up in each room?</p> <p>5 A. Absolutely.</p> <p>6 Q. Do you recall giving anybody any instructions</p> <p>7 as to how to remove mildew?</p> <p>8 A. No.</p> <p>9 Q. Why did you instruct the workers to wash the</p> <p>10 mildew?</p> <p>11 A. Because it needed to be removed.</p> <p>12 Q. Why?</p> <p>13 A. Because it was there and it needed to come off</p> <p>14 the building.</p> <p>15 Q. Why?</p> <p>16 A. We were preparing it for sale, and it's not</p> <p>17 appropriate to be in a house that's for sale.</p> <p>18 Q. Was the mildew visibly unappealing, in your</p> <p>19 opinion?</p> <p>20 A. Somebody must have made a comment to that</p> <p>21 effect, yes.</p> <p>22 Q. Were you removing the mildew because it was</p> <p>23 visibly unappealing and therefore would detract from the</p> <p>24 Foundation's efforts to sell?</p> <p>25 A. Yes.</p> <p style="text-align: right;">Page 47</p>
<p>1 Q. Do you know whether or not mildew presents any</p> <p>2 health hazard?</p> <p>3 A. Say the question again.</p> <p>4 Q. Do you know whether mildew presents any health</p> <p>5 hazard?</p> <p>6 MR. CAMPSER: I'm going to object. It's</p> <p>7 beyond the scope of his expertise.</p> <p>8 THE WITNESS: I don't know that.</p> <p>9</p> <p>10 BY MR. MORRIS:</p> <p>11 Q. Was the removal of the mildew done for any</p> <p>12 reason other than esthetic reasons?</p> <p>13 A. No.</p> <p>14 Q. Once the mildew was washed -- withdrawn. Was</p> <p>15 the intention of washing the mildew so that perspective</p> <p>16 buyers wouldn't know that the mildew had previously been</p> <p>17 there?</p> <p>18 A. Yes.</p> <p>19 Q. Can you turn the page, please? There is a</p> <p>20 reference in No. 1 to repairing and replacing the cheek</p> <p>21 walls. Do you see that?</p> <p>22 A. Yes, I do.</p> <p>23 Q. I apologize, because I understand that from</p> <p>24 your perspective this may seem somewhat tedious, but I'm</p> <p>25 going to be asking many of the same questions that I've</p> <p style="text-align: right;">Page 48</p>	<p>1 asked before, and I would just ask for your patience and ask</p> <p>2 that you listen carefully to my questions.</p> <p>3 Did you ask anybody to determine the cause --</p> <p>4 withdrawn. Let's start with whether or not you recall what</p> <p>5 you saw, in the second floor west bedroom No. 1, that caused</p> <p>6 you to write the entry in No. 1.</p> <p>7 A. I don't recall specifically, but there must</p> <p>8 have been some plaster damage on the walls.</p> <p>9 Q. Do you recall whether or not you were ever</p> <p>10 asked to identify the cause of that plaster damage?</p> <p>11 A. No, I was not.</p> <p>12 Q. Do you recall whether or not you ever asked</p> <p>13 anybody to identify the cause of the plaster damage?</p> <p>14 A. No.</p> <p>15 Q. Do you recall whether or not you ever, in</p> <p>16 fact, identified the cause of the plaster damage?</p> <p>17 A. No.</p> <p>18 Q. Do you recall whether or not prior to the sale</p> <p>19 the Foundation ever identified the cause of the plaster</p> <p>20 damage?</p> <p>21 A. No.</p> <p>22 Q. Do you recall ever having any conversations</p> <p>23 prior to the sale as to the cause of the plaster damage?</p> <p>24 A. No.</p> <p>25 Q. Do you recall prior to the sale saying any</p> <p style="text-align: right;">Page 49</p>

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<p>1 communication relating to any possible cause of the plaster</p> <p>2 damage that you saw?</p> <p>3 A. Prior to the sale?</p> <p>4 Q. Yes.</p> <p>5 A. No.</p> <p>6 Q. Did you see it after the sale?</p> <p>7 A. Well, I do know that the flashing on the roof</p> <p>8 in every one of these dormers needs to be replaced.</p> <p>9 Q. But as of the time of the sale did the</p> <p>10 Foundation believe that the flashing was the cause of the</p> <p>11 conditions that you observed?</p> <p>12 A. I don't know that.</p> <p>13 Q. And you never had any conversation with</p> <p>14 anybody to that effect, did you?</p> <p>15 A. No.</p> <p>16 Q. You'll see again on Page 1598 that there are</p> <p>17 references to repairing plaster, and on Page 1599 there is</p> <p>18 observation of mold that should be washed. Is it fair to</p> <p>19 say that all of the replastering and the washing of the mold</p> <p>20 was being done to cover up the conditions that you observed</p> <p>21 for purposes of sale?</p> <p>22 MR. CAMPSEN: I'm going to object to the</p> <p>23 term cover up to the extent that it --</p> <p>24 MR. MORRIS: I mean physically cover up.</p> <p>25 I'm not using it like in Watergate.</p> <p style="text-align: right;">Page 50</p>	<p>1 MR. CAMPSEN: Okay.</p> <p>2</p> <p>3 BY MR. MORRIS:</p> <p>4 Q. But the attempt is to physically cover up the</p> <p>5 conditions that you observed in preparation for the sale; is</p> <p>6 that fair?</p> <p>7 A. No. It's to remove the mold.</p> <p>8 Q. I apologize. Let's take it one step at a</p> <p>9 time. We have the replastering, right?</p> <p>10 A. Uh-huh.</p> <p>11 Q. And the replastering is done at places where</p> <p>12 you have already observed some uneven or effervescent</p> <p>13 problem with the plaster; is that correct?</p> <p>14 A. That's correct.</p> <p>15 Q. And the purpose of removing the old plaster in</p> <p>16 each of these places, replastering and repainting, is so</p> <p>17 that a perspective buyer wouldn't observe the conditions</p> <p>18 that you observed; is that correct?</p> <p>19 A. Okay.</p> <p>20 Q. Is that fair?</p> <p>21 A. That's correct.</p> <p>22 Q. Now let's talk about the mold. In certain</p> <p>23 areas of the mansion you observed the presence of mold; is</p> <p>24 that correct?</p> <p>25 A. We never had it tested, so I can't really say</p> <p style="text-align: right;">Page 51</p>
<p>1 that it's mold.</p> <p>2 Q. I'm sorry. Did you use the word mildew in</p> <p>3 your report?</p> <p>4 A. I used the word mildew and I did use the word</p> <p>5 mold.</p> <p>6 Q. So let's just use the words that you used</p> <p>7 previously, mold and mildew. You wrote that you observed</p> <p>8 mold and mildew in various aspects of the house as reflected</p> <p>9 on Peck No. 3; is that correct?</p> <p>10 A. That's true.</p> <p>11 Q. And you instructed the Foundation's employees</p> <p>12 to wash the mold and mildew in the places that you observed</p> <p>13 it on Peck No. 3; is that fair?</p> <p>14 A. That's true.</p> <p>15 Q. And the reason that you wanted them to wash it</p> <p>16 is because you didn't want the mold or mildew to be visible</p> <p>17 to perspective purchasers; is that correct?</p> <p>18 A. That's true.</p> <p>19 MR. MORRIS: Thank you. Can we just take a</p> <p>20 short break?</p> <p>21 MR. CAMPSEN: Sure.</p> <p>22 MR. MORRIS: Or we can go ahead and take a</p> <p>23 lunch break.</p> <p>24 MR. CAMPSEN: All right.</p> <p>25</p> <p style="text-align: right;">Page 52</p>	<p>1 (Whereupon, a lunch recess was taken.)</p> <p>2</p> <p>3 MR. MORRIS: I would like to mark as Exhibit</p> <p>4 No. 4 a document entitled, "Carter's Grove Site</p> <p>5 Preparation For Sale."</p> <p>6</p> <p>7 (Carter's Grove Site Preparation For</p> <p>8 Sale was marked as Peck Exhibit No. 4</p> <p>9 for identification.)</p> <p>10</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. Mr. Peck, do you know what this document is?</p> <p>13 A. This was the document that we used to keep</p> <p>14 track of the work necessary for the sale of the property.</p> <p>15 Q. Would this be a more formal iteration of the</p> <p>16 document that we saw as Exhibit No. 3? Is there any</p> <p>17 relationship between the two documents?</p> <p>18 A. This is a more global perspective.</p> <p>19 Q. This is Exhibit 4?</p> <p>20 A. Right. Exhibit 4 is a more global perspective</p> <p>21 on all of the work necessary for the entire site. Exhibit 3</p> <p>22 is really specific just to the mansion.</p> <p>23 Q. The document that is Exhibit 4, is that a</p> <p>24 document that you prepared?</p> <p>25 A. Yes.</p> <p style="text-align: right;">Page 53</p>

<p>1 Q. Is it a document that you maintained and 2 updated from time to time? 3 A. Yes. 4 Q. What was the purpose of the document? 5 A. Really to communicate on a broader level all 6 of the work that was going on and its status. 7 Q. Was this document disseminated to anybody? 8 A. Yes. It was shared with my boss, Bob Taylor, 9 and others like that. 10 MR. MORRIS: I would like to mark as the 11 next exhibit a series of emails with Bates Nos. 12 5839 through 43. 13 14 (Emails, Bates Nos. CWF05839 - CWF05843, 15 were marked as Peck Exhibit No. 5 for 16 identification.) 17 18 BY MR. MORRIS: 19 Q. I would ask, Mr. Peck, that you begin by 20 reviewing the last email, which is the one on the bottom of 21 the page that's noted as 29. 22 MR. CAMPSER: 29 or 39? 23 MR. MORRIS: Mine says 29. 24 MR. CAMPSER: I'm sorry. I thought you were 25 talking about Bates stamping.</p> <p style="text-align: right;">Page 54</p>	<p>1 MR. MORRIS: Bates stamped 40, Page 29. 2 3 BY MR. MORRIS: 4 Q. Do you recall, Mr. Peck, having received that 5 email from Patricia Silence? 6 A. I don't recall it, but it's here. 7 Q. Do you know who Patricia Silence is? 8 A. Yes. 9 Q. Who is Patricia Silence? 10 A. She's a curator in our collections division. 11 She has responsibility for the internal -- the interior 12 environments in our museum buildings. 13 Q. Do you know why she sent this email to you 14 among other people? 15 A. Because I was involved with the preparation 16 for sale for Carter's Grove. 17 Q. Do you see the phrase black mold? 18 A. Yes, I do. 19 Q. Do you have an understanding of what black 20 mold is? 21 A. No, I don't. 22 Q. Did you ask Ms. Silence what she meant by 23 black mold? 24 A. No, I did not. 25 Q. Did you do anything in response to your</p> <p style="text-align: right;">Page 55</p>
<p>1 receipt of this email? 2 A. It appears here that I forwarded this to Chris 3 Anderson, who works in our maintenance department, and asked 4 about adjusting the temperature and humidity levels. 5 Q. Did you ever disclose to a perspective buyer 6 the existence of black mold as described in Ms. Silence's 7 email? 8 A. Me personally? 9 Q. Yes. 10 A. No. 11 Q. Do you know if anybody from the Foundation 12 ever disclosed to the perspective buyer the presence of mold 13 of any kind at the Carter's Grove property? 14 A. No, I don't. 15 Q. Do you recall whether or not the Foundation 16 believed that the mold problem at Carter's Grove was caused 17 by excess humidity? 18 A. Ask that question again. 19 MR. MORRIS: Let me have that question read 20 back, please. 21 22 (Whereupon, the court reporter read 23 back the previous question.) 24 25 MR. CAMPSER: I'll object on the basis of</p> <p style="text-align: right;">Page 56</p>	<p>1 speculation. 2 THE WITNESS: No, I don't. 3 4 BY MR. MORRIS: 5 Q. Now, looking at your email, do you recall why 6 you asked Chris Anderson to raise the temperature setting on 7 the first and second floors by two degrees? 8 A. Generally, as you raise the temperature, the 9 humidity level in the space will go down, and that will 10 reduce the environment by which mold can grow. 11 Q. Did you ask Mr. Anderson to raise the 12 temperature for that particular purpose? 13 A. Yes, we did. 14 Q. And that was to decrease the possibility of 15 mold; is that right? 16 A. Not specifically. It was to raise -- we asked 17 him to raise the temperature so that the humidity level in 18 the space would go down. 19 Q. Why did you want the humidity level to go 20 down? 21 A. It must have been too high, but it also 22 reduces the opportunity for mold to grow. 23 Q. In your last sentence of the first paragraph, 24 you refer at the end to, quote, "This problem." Do you 25 see that?</p> <p style="text-align: right;">Page 57</p>

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<p>1 A. Okay. I got it.</p> <p>2 Q. Do you have any understanding of what the</p> <p>3 problem was that you were referring to there?</p> <p>4 A. The problem must have been higher humidity</p> <p>5 levels, higher than normal humidity levels. And by</p> <p>6 increasing the temperature in the space it would have</p> <p>7 lowered the interior humidity.</p> <p>8 Q. Did you personally believe on or around</p> <p>9 September 5th, 2007 that the excess humidity was the cause</p> <p>10 of the mold that had been observed?</p> <p>11 A. I was focussing on the humidity level, not the</p> <p>12 mold.</p> <p>13 Q. What about the humidity level caught your</p> <p>14 attention?</p> <p>15 A. Because they said it was a little high.</p> <p>16 Q. Does having humidity levels that are a little</p> <p>17 high have any adverse impacts?</p> <p>18 A. On the interior of the space it does, yes.</p> <p>19 Q. What is the adverse impact?</p> <p>20 A. We try to keep the space at a certain</p> <p>21 temperature and humidity, and if they go out of wack we make</p> <p>22 adjustments to bring them back into --</p> <p>23 Q. What's the possible result if it goes out of</p> <p>24 wack?</p> <p>25 A. It causes damage to the objects. It causes</p> <p style="text-align: right;">Page 58</p>	<p>1 damage to the original material in the building. Our first</p> <p>2 concern here was really to make sure the building, the</p> <p>3 interior environment was in good condition.</p> <p>4 Q. Among the elements of it being in good</p> <p>5 condition is being mold free and mildew free; is that fair?</p> <p>6 A. Sure.</p> <p>7 Q. You raise a question at the end here. It</p> <p>8 says, quote, "Who do we suggest clean the mold?" Do you see</p> <p>9 that?</p> <p>10 A. Uh-huh.</p> <p>11 Q. Did anybody ever respond to that?</p> <p>12 A. It looks like Patty did.</p> <p>13 Q. Do you have a recollection, or just what you</p> <p>14 read on the paper?</p> <p>15 A. Just what I read on the paper.</p> <p>16 Q. Do you know if the mold that had been observed</p> <p>17 was cleaned up and painted?</p> <p>18 A. My assumption is that it got cleaned up.</p> <p>19 Q. Why do you have that assumption?</p> <p>20 A. Because we wouldn't have sold the building</p> <p>21 with that in it.</p> <p>22 Q. Why is that?</p> <p>23 A. That's not something we would have done.</p> <p>24 Q. Had the property yet been open for viewing by</p> <p>25 perspective buyers as of early September 2007?</p> <p style="text-align: right;">Page 59</p>
<p>1 A. Yes.</p> <p>2 Q. When did that process begin?</p> <p>3 A. My recollection is that it's sort of a</p> <p>4 March/April time frame 2007.</p> <p>5 Q. Do you recall whether the observations that</p> <p>6 are contained in these emails were of parts of the mansion</p> <p>7 that are referred to in Peck Exhibit 3, or are they in</p> <p>8 different places?</p> <p>9 A. It looks like from this email that it was in</p> <p>10 the kitchen area. The cupboards, that would have been in</p> <p>11 the kitchen area.</p> <p>12 Q. And the kitchen area isn't some place that's</p> <p>13 mentioned on Peck Exhibit 3, is it?</p> <p>14 A. No, sir.</p> <p>15 Q. Do you know what the last several pages are of</p> <p>16 this exhibit, the charts?</p> <p>17 A. These are hygrothermograph charts that</p> <p>18 represent the temperature and humidity in a given space.</p> <p>19 Q. In 2007 was the Foundation actively monitoring</p> <p>20 temperature and humidity in the mansion?</p> <p>21 A. Yes, in selected areas.</p> <p>22 Q. Do you know how those areas were selected?</p> <p>23 A. No, I don't.</p> <p>24 Q. Can you describe for me what areas were</p> <p>25 selected for temperature and humidity testing?</p> <p style="text-align: right;">Page 60</p>	<p>1 A. I don't know that except for what I read right</p> <p>2 here.</p> <p>3 Q. What do you read right here?</p> <p>4 A. This one happens to be in the Carter's Grove</p> <p>5 smoking room. This one is the Carter's Grove furniture</p> <p>6 storage, and this one is the Carter's Grove drawing room.</p> <p>7 Q. Do you recall any other areas of the mansion</p> <p>8 being subjected to temperature and humidity testing in 2007?</p> <p>9 A. No.</p> <p>10 Q. Do you recall that these particular rooms were</p> <p>11 subjected to temperature and humidity testing in 2007?</p> <p>12 A. No.</p> <p>13 Q. Independent of the documents that you're</p> <p>14 looking at?</p> <p>15 A. No.</p> <p>16 Q. Do you have any recollection as to why the</p> <p>17 Foundation was testing for temperature and humidity in 2007?</p> <p>18 A. The Foundation was concerned about the</p> <p>19 interior of the building and the objects in the building,</p> <p>20 and wanted to make sure that the environment there was</p> <p>21 suitable for those objects.</p> <p>22 Q. Do you have any understanding as to whether</p> <p>23 those concerns arose for the first time in 2007 or whether</p> <p>24 those concerns existed prior to that year?</p> <p>25 A. Those have been our guidelines ever since we</p> <p style="text-align: right;">Page 61</p>

<p>1 bought the property.</p> <p>2 Q. What about the interior was the Foundation</p> <p>3 concerned about?</p> <p>4 A. Excuse me?</p> <p>5 Q. I think you mentioned that they were concerned</p> <p>6 about the interior and with --</p> <p>7 A. And the objects.</p> <p>8 Q. And the objects. So --</p> <p>9 A. There is original material inside Carter's</p> <p>10 Grove, panelling, woodwork, antique flooring, that sort of</p> <p>11 thing that we would be concerned about.</p> <p>12 Q. Is plaster among the original materials that</p> <p>13 the Foundation was concerned about?</p> <p>14 A. It's not original and it's not harmed as much</p> <p>15 by variations in temperature and humidity as wood is.</p> <p>16 Q. Let me ask a different question. Was the</p> <p>17 Foundation concerned about the plaster in 2007?</p> <p>18 A. Absolutely.</p> <p>19 Q. Was that one of the reasons why temperature</p> <p>20 and humidity testing was being conducted in actively</p> <p>21 selected areas?</p> <p>22 A. In a general way.</p> <p>23 Q. Did you have any responsibility for</p> <p>24 communicating with any of the inspectors that were retained</p> <p>25 prior to the sale?</p> <p>Page 62</p>	<p>1 A. No.</p> <p>2 Q. Can you take a look at Exhibit 1, please? And</p> <p>3 I would ask you to turn to Page 5. If you see under Item 2,</p> <p>4 a request is made for a witness that can testify as to, "Any</p> <p>5 inspections of the property commissioned by CW at any time</p> <p>6 prior to the sale." Do you see that?</p> <p>7 A. Yes, I do.</p> <p>8 Q. And you are identified as somebody with</p> <p>9 specific knowledge of all inspections performed as part of</p> <p>10 the walkthrough or in preparation of the sale. Do you see</p> <p>11 that?</p> <p>12 A. Yes.</p> <p>13 Q. Is that statement true?</p> <p>14 A. I was involved with the preparation for the</p> <p>15 sale. But the actual transfer of sale, the inspection as</p> <p>16 part of the transfer of sale, I was not involved in.</p> <p>17 Q. Do you have any knowledge of the inspection</p> <p>18 that was conducted of the roof by W. A. Lynch Roofing</p> <p>19 Company?</p> <p>20 A. Only as I've seen in preparation for this</p> <p>21 deposition.</p> <p>22 Q. Did you ever speak with anybody from the W. A.</p> <p>23 Lynch Roofing Company?</p> <p>24 A. No, sir.</p> <p>25 Q. Do you know if anybody from the Foundation</p> <p>Page 63</p>
<p>1 ever spoke with anybody from the W. A. Lynch Roofing Company</p> <p>2 in connection with the inspection that was done prior to</p> <p>3 sale?</p> <p>4 A. I don't know if anybody has had a conversation</p> <p>5 with W. A. Lynch.</p> <p>6 Q. Do you know the party that retained the W. A.</p> <p>7 Lynch Roofing Company to inspect the roof prior to sale?</p> <p>8 A. I would assume it would be the buyer.</p> <p>9 Q. Why do you assume that?</p> <p>10 A. Because we've never used that firm before.</p> <p>11 MR. MORRIS: I'm going to mark as the next</p> <p>12 exhibit -- I guess it's Peck Exhibit 6, the W. A.</p> <p>13 Lynch Roofing Company Inspection Report.</p> <p>14</p> <p>15 (W. A. Lynch Roofing Company Inspection</p> <p>16 Report was marked as Peck Exhibit No. 6</p> <p>17 for identification.)</p> <p>18</p> <p>19 BY MR. MORRIS:</p> <p>20 Q. I'm just going to begin, Mr. Peck, by asking</p> <p>21 you if you've seen this document before?</p> <p>22 A. No.</p> <p>23 Q. I'm just going to direct your attention to the</p> <p>24 last sentence of the first paragraph where it says, quote,</p> <p>25 "In discussions with CWF personnel, I was told there were no</p> <p>Page 64</p>	<p>1 known active leaks," close quote. Do you see that?</p> <p>2 A. Yes, I do.</p> <p>3 Q. Do you know whether anybody from the</p> <p>4 Foundation ever told W. A. Lynch Roofing Company that there</p> <p>5 were, quote, "No known active leaks?"</p> <p>6 A. I don't know that.</p> <p>7 Q. Have you ever heard that before today? Have</p> <p>8 you ever heard that representation made before today?</p> <p>9 A. No. That's the first time I have heard that.</p> <p>10 Q. As of the day of this report, November 12,</p> <p>11 2007, did you know of any known active leaks at the mansion?</p> <p>12 A. No.</p> <p>13 Q. As of November 12th, 2007 did anybody ever</p> <p>14 tell you that they knew of any known active leaks at the</p> <p>15 mansion?</p> <p>16 A. No.</p> <p>17 Q. As of November 12th, 2007 did you have any</p> <p>18 reason to believe at all that there were active leaks in the</p> <p>19 roof at the mansion?</p> <p>20 A. No.</p> <p>21 Q. As of November 12th, 2007 did anybody ever</p> <p>22 tell you that they had any reason at all to believe there</p> <p>23 were active leaks in the roof at the mansion?</p> <p>24 A. No.</p> <p>25 Q. Were you aware that the buyer had identified</p> <p>Page 65</p>

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<p>1 repairs that were purportedly needed with respect to the</p> <p>2 roof?</p> <p>3 A. No.</p> <p>4 Q. Can you tell me, looking back at Exhibit 1,</p> <p>5 what specific knowledge you have of the information</p> <p>6 contained in all inspections performed as part of the</p> <p>7 walkthrough of the property or in preparation for the sale?</p> <p>8 A. Those would have been inspections that I had</p> <p>9 done generally starting in 2007.</p> <p>10 Q. Do you have any knowledge of any inspection</p> <p>11 done by any third party on behalf of the Foundation?</p> <p>12 A. When?</p> <p>13 Q. Prior to the sale.</p> <p>14 A. No.</p> <p>15 Q. Do you have any knowledge of any inspection</p> <p>16 that was performed by any third party on behalf of the buyer</p> <p>17 prior to the sale?</p> <p>18 A. No.</p> <p>19 Q. So the only inspections of which you have any</p> <p>20 knowledge that occurred prior to the sale are those</p> <p>21 inspections that you conducted yourself; is that fair?</p> <p>22 A. Uh-huh, as part of the preparation for sale.</p> <p>23 Q. And you described for me that you had a</p> <p>24 walkthrough early in 2007 which resulted in the creation of</p> <p>25 some of the documents that we have seen; is that right?</p> <p style="text-align: right;">Page 66</p>	<p>1 A. That's correct.</p> <p>2 Q. Other than that initial -- withdrawn. Is that</p> <p>3 an inspection as you characterize it?</p> <p>4 A. Yes, it is.</p> <p>5 Q. How many other inspections did you do in 2007</p> <p>6 prior to the sale?</p> <p>7 A. That would have been a formal inspection that</p> <p>8 I had done, but I was out there three or four times a week</p> <p>9 looking at the property.</p> <p>10 Q. How many other formal inspections did you do?</p> <p>11 A. Before?</p> <p>12 Q. The sale, yes.</p> <p>13 A. That was the one formal inspection that we</p> <p>14 did, defined by your definition of inspection.</p> <p>15 Q. You used the word formal, not me. So what do</p> <p>16 you mean by formal? What made that first one in early 2007,</p> <p>17 quote, "Formal?"</p> <p>18 A. Well, if I went out to the site to check on</p> <p>19 the work as an inspection. So you could say that I had done</p> <p>20 inspections on a very regular basis as part of the</p> <p>21 preparation for sale.</p> <p>22 Q. I just want to understand why you used the</p> <p>23 term formal with respect to the tour that you described</p> <p>24 having occurred early in 2007.</p> <p>25 A. That was the one that we -- where we wrote all</p> <p style="text-align: right;">Page 67</p>
<p>1 of the items down.</p> <p>2 Q. Did the people who accompanied you on that</p> <p>3 tour contribute to the creation of the list of items that</p> <p>4 needed to be maintained and repaired?</p> <p>5 A. Yes, they did.</p> <p>6 Q. Was there ever an occasion where you took a</p> <p>7 tour of the property with that same group of people for</p> <p>8 purposes of identifying maintenance and repair requirements?</p> <p>9 A. No.</p> <p>10 Q. Were your observations of any subsequent</p> <p>11 inspection prior to the sale recorded in any document</p> <p>12 anywhere?</p> <p>13 A. Exhibit 4 was modified on a regular basis.</p> <p>14 Q. I have seen various iterations of that. Just</p> <p>15 so I understand, as you would make the inspections, the</p> <p>16 non-formal inspections that you've described, you would</p> <p>17 update the document that's been marked as Peck Exhibit 4; is</p> <p>18 that correct?</p> <p>19 A. That's correct.</p> <p>20 Q. Is there any other manner in which your</p> <p>21 observations during these non-formal inspections would have</p> <p>22 been recorded?</p> <p>23 A. No.</p> <p>24 Q. Did you have anything to do with the retention</p> <p>25 of a contractor who demolished the recreation center and the</p> <p style="text-align: right;">Page 68</p>	<p>1 parking lot?</p> <p>2 A. The reception center?</p> <p>3 Q. Yes.</p> <p>4 A. Yes.</p> <p>5 Q. Did I say recreation?</p> <p>6 A. Uh-huh.</p> <p>7 Q. I've had this problem for two days now. I</p> <p>8 apologize. What did you do with respect to the retention of</p> <p>9 a contractor for purposes of demolishing the reception</p> <p>10 center?</p> <p>11 A. I developed the scope of work for the</p> <p>12 demolition. I bid the work out to several contractors. I</p> <p>13 worked with the county on permitting. I communicated the</p> <p>14 work internally.</p> <p>15 Q. Do you have an understanding of why the</p> <p>16 Foundation decided to demolish the recreation center and</p> <p>17 parking lot?</p> <p>18 A. Yes.</p> <p>19 Q. What is your understanding of the reason for</p> <p>20 the demolition?</p> <p>21 A. It was part of our effort to take all of the</p> <p>22 museum items away from the property, and it was an</p> <p>23 appropriate site for a residence if somebody wanted to build</p> <p>24 a residence on that site.</p> <p>25 MR. MORRIS: I would like to mark as Peck</p> <p style="text-align: right;">Page 69</p>

<p>1 Exhibit 7 a document that is titled, "Tom Peck 2 Photographs," attached to which are Bates Nos., 3 5046 through 53. 4 5 (Tom Peck Photographs, Bates Nos. CWF05046 - 6 CWF05053, were marked as Peck Exhibit No. 7 7 for identification.) 8 9 BY MR. MORRIS: 10 Q. Mr. Peck, do you know what this document is? 11 A. These are photographs that were taken prior to 12 the demolition of the reception center, primarily showing 13 the Rockefeller Memorial at the rear of the site. 14 Q. Looking at the page that is marked 46 in the 15 lower right-hand corner, which is the second page of the 16 document, is that the reception center? 17 A. Yes, it is. 18 Q. Was this walkway demolished or does that still 19 exist today to the best of your knowledge? 20 A. That's the bridge that goes over the ravine, 21 and that still remains today. 22 Q. But the building itself in the background is 23 gone? 24 A. Yes, it is. 25 Q. Is that the building which you hired the</p> <p style="text-align: right;">Page 70</p>	<p>1 contractor for, to demolish? 2 A. Yes. 3 Q. Are there any other buildings or creations in 4 any of the photographs in this document that were demolished 5 pursuant to your instructions? 6 A. Say that again. 7 Q. Is there any other building or structure 8 reflected in these photographs that was demolished pursuant 9 to your instructions? 10 A. Not specifically in these photographs, but the 11 parking lot and the memorial were all taken down. 12 Q. Is the memorial the plaque that's depicted on 13 the next to the last page? 14 A. Yes, it is. 15 Q. Do you know whatever happened to that plaque? 16 A. No, I don't. 17 MR. MORRIS: I'm going to mark as the next 18 exhibit, which will be Peck Exhibit No. 8, a 19 document where the first page is entitled, 20 "K. F. Wilson," and it goes from Bates Nos. 5027 21 through 37. 22 23 (K. F. Wilson Contract was marked as 24 Peck Exhibit No. 8 for identification.) 25</p> <p style="text-align: right;">Page 71</p>
<p>1 BY MR. MORRIS: 2 Q. Have you ever seen this document before? 3 A. Yes. 4 Q. What is it? 5 A. This is a contract that the contractor had, 6 the actual formal purchase order and contract that the 7 contractor had to demolish and remove all the items from the 8 reception center. 9 Q. And who is Margaret Brown? 10 A. Margaret Brown was a purchasing agent at the 11 time. 12 Q. Did you present this document to Ms. Brown for 13 her signature? 14 A. She created the document. 15 Q. Can you tell me how K. F. Wilson came to be 16 the contractor for the purposes described in Peck Exhibit 17 No. 8? 18 A. We selected four or five contractors to give 19 us bids on this work. We developed a scope of work and met 20 four or five contractors out on the site, took them through 21 it. They presented their proposals to us and we selected 22 K. F. Wilson. 23 Q. What were the factors that the Foundation used 24 in deciding who the winning bidder would be? 25 A. We had used K. F. Wilson before, so we had</p> <p style="text-align: right;">Page 72</p>	<p>1 some experience with them, and they were the lowest price. 2 Q. On how many other occasions are you aware of 3 that the Foundation used K. F. Wilson? 4 A. I can't tell you specifically, but I know 5 we've used them before, more than two or three times. 6 Q. And they were also the lowest price? 7 A. That's right. 8 Q. If you turn your attention to the page that's 9 marked 5029 in the right-hand corner, you'll see there are a 10 couple of bullet points that refer to the disposal of 11 materials resulting from the demolition. Do you see that? 12 A. Okay. 13 Q. I apologize. We are going to come back to 14 that in a moment. If you can, turn the page to the Contract 15 Administrator provision. 16 MS. WADDELL: Where are you, John? 17 MR. MORRIS: The page that is marked 5030. 18 Towards the bottom you'll see there is a provision 19 called Contract Administrator. 20 21 BY MR. MORRIS: 22 Q. Is it true, sir, that you were identified as 23 the Foundation's contract administrator who would, among 24 others thing, monitor the contractor's performance and 25 adherence to the requirements unique to the work?</p> <p style="text-align: right;">Page 73</p>

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<p>1 A. That's correct.</p> <p>2 Q. Now, if you turn back to Page 5029, there were</p> <p>3 some contractual requirements for the removal of the</p> <p>4 demolition debris; is that fair?</p> <p>5 A. That's correct.</p> <p>6 Q. And the contractor was prohibited from</p> <p>7 allowing the debris to accumulate at the Carter's Grove</p> <p>8 site; is that fair?</p> <p>9 A. That's correct.</p> <p>10 Q. And they were required to transport and</p> <p>11 legally dispose of all materials resulting from the</p> <p>12 demolition operation somewhere other than Carter's Grove; is</p> <p>13 that right?</p> <p>14 A. That's correct.</p> <p>15 Q. Do you know whether the contractor complied</p> <p>16 with those contractual provisions?</p> <p>17 A. As part of this contract they were required to</p> <p>18 do that.</p> <p>19 Q. I understand that that's what they were</p> <p>20 required to do. That's what we've just established. What</p> <p>21 I'm asking you is whether you know that the contractor</p> <p>22 complied with those specific provisions that we just read?</p> <p>23 A. Yes, they did do that.</p> <p>24 Q. How do you know they did that?</p> <p>25 A. I saw them on a couple of occasions when I was</p> <p style="text-align: right;">Page 74</p>	<p>1 out there, and we had our construction manager that was</p> <p>2 responsible for overseeing the day-to-day work. There is</p> <p>3 nothing for me to believe that they didn't do what they said</p> <p>4 they were going to do.</p> <p>5 Q. When you say you saw them, what did you see</p> <p>6 them doing?</p> <p>7 A. I saw them tearing down the building and</p> <p>8 putting it in trucks and hauling it away.</p> <p>9 Q. Where did you see the trucks go?</p> <p>10 A. They left the Carter's Grove site.</p> <p>11 Q. You saw them actually exit onto a road that</p> <p>12 was not part of the Carter's Grove property?</p> <p>13 A. Absolutely.</p> <p>14 Q. Where did you see them do that?</p> <p>15 A. Onto Ron Springs Road.</p> <p>16 Q. Did you follow them down there?</p> <p>17 A. No, sir.</p> <p>18 Q. How did it come to be that you happened to be</p> <p>19 at that particular spot at the moment the trucks were</p> <p>20 leaving?</p> <p>21 A. Because the access in and out of the Carter's</p> <p>22 Grove site is via Ron Springs Road. It was the only way we</p> <p>23 could get in and out of there. And when I would drive in to</p> <p>24 observe the work that was going on, I would see trucks</p> <p>25 leaving the same way I was coming in.</p> <p style="text-align: right;">Page 75</p>
<p>1 Q. How many times did you see that happen?</p> <p>2 A. Three or four.</p> <p>3 Q. Who was the construction manager that you</p> <p>4 referred to?</p> <p>5 A. Larry Heath.</p> <p>6 Q. Was Mr. Heath employed by the Foundation?</p> <p>7 A. Yes, he was.</p> <p>8 Q. What was Mr. Heath's responsibility?</p> <p>9 A. To deal with the day-to-day responsibility,</p> <p>10 among other things, but watching this contractor.</p> <p>11 Q. Do you know where the debris was dumped?</p> <p>12 A. No, I don't.</p> <p>13 Q. Did you ever ask?</p> <p>14 A. No.</p> <p>15 Q. Did the contractor have any responsibility to</p> <p>16 provide proof to the Foundation that it had legally disposed</p> <p>17 off site of all materials that it had removed?</p> <p>18 A. No.</p> <p>19 Q. Did, in fact, the contractor ever make any</p> <p>20 representation to the Foundation that it had complied with</p> <p>21 these provisions?</p> <p>22 A. Say that again.</p> <p>23 Q. Did the contractor ever make any</p> <p>24 representation to the Foundation that it had disposed of all</p> <p>25 materials and done so by transporting and legally disposing</p> <p style="text-align: right;">Page 76</p>	<p>1 of them off site?</p> <p>2 A. They did that by agreeing to the contract and</p> <p>3 by sending us a bill at the end of the job.</p> <p>4 Q. And that's the only basis on which the</p> <p>5 Foundation can conclude that the contractor represented that</p> <p>6 it was in compliance with these provisions that we've</p> <p>7 reviewed; is that correct?</p> <p>8 A. That's correct.</p> <p>9 Q. Did you ever learn that the buyer of the</p> <p>10 property had made allegations that some or all of the</p> <p>11 recreation center and parking lot had either been buried or</p> <p>12 dumped on the Carter's Grove property?</p> <p>13 A. I knew that he had made allegations to that</p> <p>14 point, yes.</p> <p>15 Q. When did you first become aware of those</p> <p>16 allegations?</p> <p>17 A. When it was in the newspaper.</p> <p>18 Q. Do you recall when that was?</p> <p>19 A. Spring of 2011.</p> <p>20 Q. At any time since learning of these</p> <p>21 allegations have you spoken with the contractor about what</p> <p>22 it did with the debris from the demolition of the recreation</p> <p>23 center and parking lot?</p> <p>24 A. Yes.</p> <p>25 Q. When did you speak with the contractor?</p> <p style="text-align: right;">Page 77</p>

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<p>1 A. This morning.</p> <p>2 Q. What did the contractor tell you?</p> <p>3 A. The contractor told me that they removed all</p> <p>4 of the items from the Carter's Grove site.</p> <p>5 Q. Who did you speak with at the contractor?</p> <p>6 A. Ken Wilson, president of K. F. Wilson.</p> <p>7 Q. Did you ask Mr. Wilson if he had any</p> <p>8 documentation that could demonstrate that?</p> <p>9 A. No.</p> <p>10 Q. Did Mr. Wilson offer any documentation to</p> <p>11 demonstrate that his company had properly disposed of all of</p> <p>12 the debris from the demolition?</p> <p>13 A. No.</p> <p>14 Q. How long did the conversation last?</p> <p>15 A. Forty-five seconds.</p> <p>16 Q. Is there anything that was said in the</p> <p>17 conversation that you haven't described for me so far?</p> <p>18 A. No.</p> <p>19 Q. Have you taken any trips to the Carter's Grove</p> <p>20 property for purposes of doing an inspection relative to the</p> <p>21 allegations that you read about in the newspaper?</p> <p>22 A. Only at the request of the buyer.</p> <p>23 Q. How many inspections did you do?</p> <p>24 A. One.</p> <p>25 Q. When was that?</p> <p style="text-align: right;">Page 78</p>	<p>1 A. Whenever we went the first time, three weeks</p> <p>2 ago, four weeks ago.</p> <p>3 Q. Who was with you at that time?</p> <p>4 A. Mark Wenger, Rollin Wolley, Andy Edwards,</p> <p>5 myself, Gail, Barrow. I think that's it.</p> <p>6 Q. How long did this site visit last?</p> <p>7 A. The site visit at the reception center lasted</p> <p>8 ten minutes or so.</p> <p>9 Q. I mean at the property in general. We'll talk</p> <p>10 about what you did there in a moment.</p> <p>11 A. An hour.</p> <p>12 Q. What was the purpose of the visit?</p> <p>13 A. We were requested by the buyer to come out and</p> <p>14 look at the site for the purpose of looking at some</p> <p>15 potential dump sites.</p> <p>16 Q. Was there any other purpose to the visit?</p> <p>17 A. No.</p> <p>18 Q. Were you shown any potential dump sites?</p> <p>19 A. Yes.</p> <p>20 Q. Do you recall where they were located?</p> <p>21 A. They were located along the beach road, three</p> <p>22 sites along the beach road.</p> <p>23 Q. Can you describe for me what you saw at those</p> <p>24 sites along the beach road?</p> <p>25 A. The first site was sort of a low area in the</p> <p style="text-align: right;">Page 79</p>
<p>1 middle of the pasture. The second area was two depressions</p> <p>2 in the ground, and the third was some debris, some gravel</p> <p>3 debris that had been deposited along the beach road.</p> <p>4 Q. Who on behalf of the owner accompanied you</p> <p>5 during this tour?</p> <p>6 A. Mr. Wenger.</p> <p>7 Q. Did anybody express an opinion as to the cause</p> <p>8 of the depressions that you observed?</p> <p>9 A. No.</p> <p>10 Q. Did anybody express an opinion as to the cause</p> <p>11 of the low area that you observed in the middle of the</p> <p>12 pasture?</p> <p>13 A. Other than low drainage, no, a low spot in the</p> <p>14 pasture.</p> <p>15 Q. Did anybody offer an opinion as to the source</p> <p>16 of the gravel debris that you described as being on the</p> <p>17 beach road?</p> <p>18 A. No.</p> <p>19 Q. Did you notice whether there was any asphalt</p> <p>20 in the gravel debris?</p> <p>21 A. There appeared to be some.</p> <p>22 Q. Did anybody try to identify the source of the</p> <p>23 asphalt that you observed in the gravel debris?</p> <p>24 A. I think there has been some discussion about</p> <p>25 it, but I don't know what the outcome has been.</p> <p style="text-align: right;">Page 80</p>	<p>1 Q. Have you been involved in any such</p> <p>2 discussions?</p> <p>3 A. No.</p> <p>4 Q. Do you have any information about the nature</p> <p>5 of such discussions?</p> <p>6 A. No.</p> <p>7 Q. Do you know who was involved in such</p> <p>8 discussions?</p> <p>9 A. Mark Wenger was one of them, and some of the</p> <p>10 facilities people.</p> <p>11 Q. Do you know the names of any of the facilities</p> <p>12 people who were involved in these discussions with</p> <p>13 Mr. Wenger?</p> <p>14 A. Rollin Wolley would be the only one.</p> <p>15 Q. Do you know anything about the conversations</p> <p>16 between Mr. Wenger and Mr. Wolley about this?</p> <p>17 A. No, I don't.</p> <p>18 Q. How do you know that they discussed it?</p> <p>19 A. Because there was discussion during the site</p> <p>20 visit.</p> <p>21 Q. What did you hear?</p> <p>22 A. They were trying to hypothesize where it came</p> <p>23 from.</p> <p>24 Q. Were any particular sources identified during</p> <p>25 this hypothesis?</p> <p style="text-align: right;">Page 81</p>

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<p>1 A. No.</p> <p>2 Q. Was there any speculation at all as to the</p> <p>3 source of the asphalt?</p> <p>4 A. Some discussion that it may have come from the</p> <p>5 gravel parking lot in front of the stable building that used</p> <p>6 to be the visitor center prior to 1987.</p> <p>7 Q. Did anybody suggest that they had seen those</p> <p>8 piles prior to the sale?</p> <p>9 A. No.</p> <p>10 Q. Nobody said, oh, gee, those have been there</p> <p>11 forever, I've seen those a million times or anything like</p> <p>12 that?</p> <p>13 A. No. To answer your question, no.</p> <p>14 Q. Was there any suggestion at all that the piles</p> <p>15 existed as you observed them prior to the sale?</p> <p>16 A. Yes.</p> <p>17 Q. What can you tell me about that?</p> <p>18 A. There were trees growing up in the middle of</p> <p>19 them, so I would have to assume they had been there awhile.</p> <p>20 Q. Was there any discussion about that, or was</p> <p>21 that just your observation?</p> <p>22 A. My observation.</p> <p>23 Q. Do you have any understanding of the</p> <p>24 requirements of the -- withdrawn. In the contract the</p> <p>25 contractor was required to, quote, "Legally dispose off site</p> <p style="text-align: right;">Page 82</p>	<p>1 all materials resulting from the demolition operations," and</p> <p>2 I'm wondering if you have any knowledge of the legal</p> <p>3 requirements referred to there.</p> <p>4 A. The legal requirements would be to remove them</p> <p>5 from the site and put them in a legal landfill.</p> <p>6 Q. Was the legal landfill ever identified for</p> <p>7 you?</p> <p>8 A. No.</p> <p>9 Q. Did you ever ask for the identification of the</p> <p>10 legal landfill?</p> <p>11 A. No.</p> <p>12 Q. Can you identify for me, as you sit here</p> <p>13 today, a legal landfill within 50 miles of Carter's Grove?</p> <p>14 A. No.</p> <p>15 Q. How about within 500 miles?</p> <p>16 A. I don't know. I don't know what the</p> <p>17 definition of a legal landfill is.</p> <p>18 MR. MORRIS: Okay. I was just using your</p> <p>19 term. Let's take a five-minute break. I may be</p> <p>20 just about done.</p> <p>21</p> <p>22 (Whereupon, a brief recess was taken.)</p> <p>23</p> <p>24 BY MR. MORRIS:</p> <p>25 Q. Earlier you testified that you saw the</p> <p style="text-align: right;">Page 83</p>
<p>1 contractor's trucks leaving the property, and I think you</p> <p>2 testified that the exit that they were departing from was</p> <p>3 the only exit at the property; is that right?</p> <p>4 A. The only exit that we allowed them to go out.</p> <p>5 We didn't want them to go out the front of the property</p> <p>6 because it might damage the road.</p> <p>7 Q. Are you aware that there was a second more</p> <p>8 recent site visit?</p> <p>9 A. Yes.</p> <p>10 Q. You did not go on that site visit?</p> <p>11 A. Yes, I did.</p> <p>12 Q. Oh, you did. I thought you said you only went</p> <p>13 once.</p> <p>14 A. I'm sorry. I've been to both site visits.</p> <p>15 Q. How long after the first site visit did you go</p> <p>16 on the second site visit?</p> <p>17 A. I don't recall the exact details, probably</p> <p>18 three weeks.</p> <p>19 Q. Did the same group of people accompany you on</p> <p>20 the second site visit as went on the first one?</p> <p>21 A. Yes, they did.</p> <p>22 Q. What was the purpose of the second site visit?</p> <p>23 A. To look at some debris that the owner had dug</p> <p>24 up out of the ground.</p> <p>25 Q. How long did this site visit last?</p> <p style="text-align: right;">Page 84</p>	<p>1 A. Approximately an hour.</p> <p>2 Q. What did you do during this hour?</p> <p>3 A. We were shown the debris that the owner dug up</p> <p>4 out of the ground.</p> <p>5 Q. What did you visually -- what did you see?</p> <p>6 A. There was a hole in the ground with some dirt</p> <p>7 and fill that had been taken out, and a couple of pieces of</p> <p>8 material. I don't know what the material was.</p> <p>9 Q. Did it look like asphalt?</p> <p>10 A. I don't know what the material was.</p> <p>11 Q. I'm not asking you if you knew what it was.</p> <p>12 I'm asking you if it looked like asphalt.</p> <p>13 A. Appeared to be an asphalt type material.</p> <p>14 Q. Does the Foundation have any reason to believe</p> <p>15 that that asphalt type material had been placed in the</p> <p>16 ground after the sale?</p> <p>17 A. No.</p> <p>18 Q. Did you have any discussions with anybody from</p> <p>19 the Foundation as to potential sources of the asphalt that</p> <p>20 you -- of the material that appeared to be asphalt that you</p> <p>21 observed during the second visit?</p> <p>22 A. No.</p> <p>23 Q. Did you ever have any discussion with anybody</p> <p>24 about the potential source of the material that appeared to</p> <p>25 be asphalt?</p> <p style="text-align: right;">Page 85</p>

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<p>1 A. No.</p> <p>2 Q. Did you have any conversation with anybody</p> <p>3 from the Foundation about the visit itself? Withdrawn. Did</p> <p>4 you have any conversations with anybody employed by the</p> <p>5 Foundation about what was seen at this hole?</p> <p>6 A. I think we discussed in general the fact that</p> <p>7 there was a hole and that there was some material there, but</p> <p>8 no conjecture as to where it came from.</p> <p>9 Q. Did anybody suggest taking any further steps</p> <p>10 in connection with the observations that were made during</p> <p>11 this site visit?</p> <p>12 A. Do you mean in terms of next steps?</p> <p>13 Q. Uh-huh.</p> <p>14 A. No, not that I'm aware of.</p> <p>15 Q. Did anybody express any concern that any of</p> <p>16 the materials might be hazardous?</p> <p>17 A. No.</p> <p>18 Q. Was anybody given any responsibilities to take</p> <p>19 any act in connection with the allegations pertaining to the</p> <p>20 burial of debris?</p> <p>21 A. No.</p> <p>22 Q. Was anybody given any instructions to take any</p> <p>23 act with respect to the allegations pertaining to the</p> <p>24 asphalt or other debris piles in the woods?</p> <p>25 A. No.</p> <p style="text-align: right;">Page 86</p>	<p>1 MR. MORRIS: I have no further questions at</p> <p>2 this time.</p> <p>3 MR. CAMPSER: I have a couple.</p> <p>4</p> <p>5 EXAMINATION</p> <p>6</p> <p>7 BY MR. CAMPSER:</p> <p>8 Q. Mr. Peck, prior to 2003 what was the use of</p> <p>9 the mansion and the property?</p> <p>10 MR. MORRIS: Objection, beyond the scope of</p> <p>11 anything that you have allowed us to ask of the</p> <p>12 witness. The five-year period was established by</p> <p>13 the Foundation.</p> <p>14 MR. CAMPSER: You had asked what it was used</p> <p>15 for before, and I just want to -- it's a lead in</p> <p>16 question. I'm not going to go into anything before</p> <p>17 that.</p> <p>18 MR. MORRIS: That's fine.</p> <p>19 THE WITNESS: Repeat the question again.</p> <p>20</p> <p>21 BY MR. CAMPSER:</p> <p>22 Q. What was the property used for prior to 2003?</p> <p>23 A. It was used as an exhibition building as part</p> <p>24 of the Colonial Williamsburg properties.</p> <p>25 Q. What happened in 2003?</p> <p style="text-align: right;">Page 87</p>
<p>1 A. We closed the property to the public in an</p> <p>2 effort to determine what its future use would be.</p> <p>3 Q. How long did it remain closed?</p> <p>4 A. It remained closed to the public until it was</p> <p>5 sold in December of 2007.</p> <p>6 Q. So between 2003 and 2007 it was closed to the</p> <p>7 public and was not otherwise used?</p> <p>8 A. That's right.</p> <p>9 MR. MORRIS: Objection to the form of the</p> <p>10 question.</p> <p>11</p> <p>12 BY MR. CAMPSER:</p> <p>13 Q. Now, when was this property constructed?</p> <p>14 MR. MORRIS: Objection to the form of the</p> <p>15 question.</p> <p>16</p> <p>17 BY MR. CAMPSER:</p> <p>18 Q. When was the mansion constructed?</p> <p>19 MR. MORRIS: Objection to the form of the</p> <p>20 question.</p> <p>21 THE WITNESS: Can I answer?</p> <p>22</p> <p>23 BY MR. CAMPSER:</p> <p>24 Q. Yes.</p> <p>25 A. Roughly 1725, sometime in the early 1700s.</p> <p style="text-align: right;">Page 88</p>	<p>1 Q. Now, between 2003 and 2007 you testified it</p> <p>2 was closed. Can you describe generally what happens to a</p> <p>3 building, and I'm talking about the mansion, a building of</p> <p>4 this age when it's closed?</p> <p>5 MR. MORRIS: Objection to the form of the</p> <p>6 question.</p> <p>7 THE WITNESS: Generally what we would do is we</p> <p>8 would close the buildings, do regular inspections</p> <p>9 to buildings, adjust the temperature and humidity</p> <p>10 accordingly because it's not open to the public.</p> <p>11 And that's about it.</p> <p>12</p> <p>13 BY MR. CAMPSER:</p> <p>14 Q. When the building is closed do you expect mold</p> <p>15 to occur in the building?</p> <p>16 MR. MORRIS: Objection to the form of the</p> <p>17 question.</p> <p>18 THE WITNESS: We would expect some mold and</p> <p>19 mildew to grow inside a closed up building like</p> <p>20 that.</p> <p>21</p> <p>22 BY MR. CAMPSER:</p> <p>23 Q. Would you expect spalling in the building?</p> <p>24 MR. MORRIS: Objection to the form of the</p> <p>25 question.</p> <p style="text-align: right;">Page 89</p>

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<p>1 THE WITNESS: There would be some minor 2 plaster repairs necessary, spalling, cracking of 3 plaster, that sort of thing. It's to be expected. 4 5 BY MR. CAMPSER: 6 Q. Why is that? 7 A. Generally because the building is closed up 8 and generally because the temperature and humidity levels 9 are adjusted. 10 Q. Explain how that occurs, the spalling, the 11 cracking. 12 A. The cracking normally happens because plaster 13 shifts or the building moves a little bit. Spalling is 14 normally associated with some sort of water penetration, 15 water, moisture problem, either internal or external. 16 Q. And is that typical in a building of this 17 nature? 18 A. Very typical in a building of this nature. 19 Q. Now, you did a walkthrough inspection in early 20 2007, and I believe Exhibit 3 were the results of that 21 inspection? 22 A. That's right. 23 Q. Now, you testified in connection with some of 24 the items in here. For example, Page 1590, Bates stamp 25 1590, No. 2, in Grandma's Room remove water damage on the</p> <p style="text-align: right;">Page 90</p>	<p>1 south wall. Explain the extent of the water damage that you 2 recall observing. 3 A. I don't recall specifically how big it was, 4 but that would generally be some spalling plaster maybe on 5 the face of the fireplace. Water could have come in through 6 flashing, could have come in through the interior of the 7 fireplace, or it could have been from the humidity level on 8 the inside of the building. 9 MR. MORRIS: I move to strike. The answer is 10 non-responsive. 11 12 BY MR. CAMPSER: 13 Q. If in the process of doing your walkthrough, 14 if there were a serious issue in the building, would you 15 have had an investigation, work done? 16 MR. MORRIS: Objection to the form of the 17 question. 18 THE WITNESS: Absolutely. If there was a 19 problem we would have fixed it. 20 21 BY MR. CAMPSER: 22 Q. Were any of the things you observed and 23 written down in Exhibit No. 3 of the nature that required 24 further inspection? 25 A. No.</p> <p style="text-align: right;">Page 91</p>
<p>1 Q. Would you characterize those as typical of 2 those occurrences in a building of this age? 3 MR. MORRIS: Objection to the form of the 4 question. 5 THE WITNESS: Yes, I would. 6 7 BY MR. CAMPSER: 8 Q. What was the general condition of the building 9 in 2007? 10 A. I think the general condition of the building 11 was in good condition. 12 Q. You testified in response to questions on 13 Exhibit No. 5 about the black mold, that black mold was 14 there, or something that looked like black mold was there? 15 A. Uh-huh. 16 MR. MORRIS: Objection to the form of the 17 question. 18 19 BY MR. CAMPSER: 20 Q. Do you have any knowledge that it reoccurred 21 after it was cleaned up? 22 A. No. 23 Q. With respect to the questions concerning the 24 dumping, did the Foundation have any evidence that during 25 its ownership of the property that it ever dumped any</p> <p style="text-align: right;">Page 92</p>	<p>1 asphalt or asphalt like material on the property? 2 A. Not to my knowledge. 3 Q. Repairs that were done in connection with the 4 sale of the property, why did you do those repairs? 5 MR. MORRIS: Objection to the form of the 6 question. Can we be more specific about which 7 particular repairs? There are lists and lists and 8 pages of repairs. 9 10 BY MR. CAMPSER: 11 Q. Let's take the repairs that are shown on 12 Exhibit No. 3. What was the purpose of doing all of these 13 repairs shown on Exhibit No. 3? 14 A. The purpose was to make the repair so that the 15 house was in better condition, and we wanted to make the 16 house look as good as it could for the sale. 17 Q. Did the Foundation attempt to cover up any 18 of the issues and repairs that were necessary to the 19 property? 20 MR. MORRIS: Objection to the form of the 21 question. 22 THE WITNESS: Absolutely not. 23 MR. CAMPSER: All right. I have no other 24 questions. 25</p> <p style="text-align: right;">Page 93</p>

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<div>1 EXAMINATION</div> <div>2</div> <div>3 BY MR. MORRIS:</div> <div>4 Q. The repairs that were done that we talked</div> <div>5 about earlier, the replastering and the repainting, once</div> <div>6 those repairs are finished a perspective buyer can no longer</div> <div>7 see the conditions that caused you to make the repairs;</div> <div>8 isn't that correct?</div> <div>9 A. Is that a question?</div> <div>10 Q. Yes. Isn't that correct?</div> <div>11 A. That's correct.</div> <div>12 MR. MORRIS: Thank you. I have no further</div> <div>13 questions.</div> <div>14 MR. CAMPSER: You have a right to read and</div> <div>15 make corrections to the transcript, which I would</div> <div>16 recommend that you do.</div> <div>17 THE WITNESS: Okay.</div> <div>18</div> <div>19 (Whereupon, the deposition was</div> <div>20 concluded at 2:30 p.m.)</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div> <div>Page 94</div>	<div>1 REPORTER'S CERTIFICATE</div> <div>2</div> <div>3 I, NANCY C. MANN, Court Reporter, certify;</div> <div>4 That the foregoing proceedings were taken before me at</div> <div>5 the time and place therein set forth, at which time the</div> <div>6 witness was put under oath by me;</div> <div>7 That the testimony of the witness and all objections</div> <div>8 made at the time of the examination were recorded</div> <div>9 stenographically by me and were thereafter transcribed;</div> <div>10 That the foregoing is a true and correct transcript of</div> <div>11 my shorthand notes so taken to the best of my ability of the</div> <div>12 testimony given by the witness.</div> <div>13 I further certify that I am not a relative or employee</div> <div>14 of any attorney or of any of the parties, nor financially</div> <div>15 interested in the action.</div> <div>16 Dated this day of ,</div> <div>17 2011.</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22 Nancy C. Mann, Court Reporter</div> <div>23 Registration No. 7072030</div> <div>24</div> <div>25</div> <div>Page 95</div>

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